

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

GARAVENTA LAND AND LIVESTOCK CO., a
corporation, JOE GARAVENTA, LOUISE
GARAVENTA, his wife, FRANK GARA-
VENTA and WILLIAM GARAVENTA,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the
United States for the District of Nevada.

FILED

DEC 21 1941

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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Reno, Nevada,

DOUGLAS A. BUSEY, Esq.,
City Hall Bldg.,
Reno, Nevada,
For the Appellee. [1*]

In the District Court of the United States of
America, in and for the District of Nevada

No. 2741

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARAVENTA LAND & LIVESTOCK COM-
PANY, a corporation, JOE GARAVENTA,
LOUISE GARAVENTA, his wife, FRANK
GARAVENTA and WILLIAM GARAVENTA,
FIRST DOE, SECOND DOE, THIRD
DOE and FOURTH DOE,

Defendants.

COMPLAINT

United States of America,
District of Nevada—ss.

Comes now the United States of America, by and
through E. P. Carville, United States Attorney in
and for the District of Nevada, who prosecutes this
action on its behalf, and pursuant to instructions
of the Attorney General, complains of defendants
and for cause of action alleges:

I.

That the plaintiff at all times herein mentioned,
and ever since the year 1848, has been, and now is,
the legal owner, and is now entitled to the posses-
sion of the following described lands and premises,

situate, lying and being in the County of Washoe, State and District of Nevada, to-wit:

T. 20 N., R. 24 E., M.D.M., Nevada, Sec. 4, NE SW, NW SW, SW SW, SE SW, S/2 SW NW, S/2 SE NW: Sec. 9, Lot 17, containing 236.14 acres. [2]

II.

That on or about May 7, 1925, pursuant to that certain Act of Congress of June 7, 1924, entitled "An Act for the relief of settlers and town-site occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada," being Chap. 311, Public Laws of the United States of America, passed by the Sixty-Eighth Congress, 1923-1925 (43 Stats. 596, Chap. 311), and the regulations promulgated thereunder by the Department of the Interior on March 3, 1925, as amended, the above named defendant, Garaventa Land and Livestock Company, made application to the Department of Interior to enter upon and to purchase the hereinbefore described lands; and pursuant to said Act, and Regulations, such application was allowed, and said defendant did enter upon said lands and was required to and did agree to pay plaintiff for said lands, as the purchase price thereof, the total sum of Four Thousand Five Dollars and Seventy cents (\$4,005.70), plus interest accruing after June, 1925, at the rate of four per centum (4%) per annum on all unpaid principal, such interest to be paid on or before April 10, 1936.

III.

That said defendant has failed, refused and neglected to pay said purchase price, or any part thereof, or interest, except the sum of One Thousand Eight Hundred and Fifty-three Dollars and Ninety-two cents (\$1,853.92), which sum was paid on or about June, 1925, and defendant has paid no further sum on said purchase price since said date.

IV.

That on or about May 13, 1936, the entry of said defendant upon said lands, and its right to purchase the same, was cancelled by the Department of the Interior, pursuant [3] to the terms of said Act of June 7, 1924, and said Regulations, for failure to pay the agreed purchase price thereof within the time allowed by law; and on March 10, 1936, said defendant was served by United States registered mail with written notice of such cancellation.

V.

That on or about June 2, 1936, written notice was served on said defendant by Alida C. Bowler, Superintendent of Carson Indian Agency, Bureau of Indian Affairs, Department of Interior, demanding that said defendant vacate and yield up to plaintiff said lands on or before September 30, 1936.

That notwithstanding said demand to vacate and said cancellation of entry, said defendant is still in possession and occupancy of said lands and wrongfully and unlawfully refuse to vacate said lands and yield the same to plaintiff.

VI.

That the defendant Garaventa Land and Live-stock Company was at all times herein mentioned and now is a corporation created and existing under and by virtue of the laws of the State of Nevada.

VII.

Plaintiff is informed and believes, and therefore alleges the fact to be that defendants First Doe, Second Doe, Third Doe and Fourth Doe, whose other or true names are to the plaintiff unknown, and the defendants Joe Garaventa, Louise Garaventa, his wife, Frank Garaventa and William Garaventa, claim title and right of possession to the hereinbefore described property, wrongfully, unlawfully and adversely to plaintiff; and plaintiff prays, upon learning the true names of said persons whose names are unknown, to insert the same herein and that they be made parties defendant herein. [4]

Wherefore, plaintiff prays judgment against the defendants for the recovery of the possession of said lands and premises, and for the issuance of all necessary writs to accomplish such object, together with costs of suit.

E. P. CARVILLE,
United States Attorney,
By THOMAS O. CRAVEN,
Assistant United States At-
torney. [5]

United States of America,
District of Nevada—ss.

I, Thomas O. Craven, upon oath do say:

That I am an Assistant United States Attorney for the District of Nevada; that I have read the foregoing complaint by me subscribed and that I know the contents thereof, and that the matters and things therein contained, as I am informed and believe, are true.

THOMAS O. CRAVEN

Subscribed and sworn to before me this 4th day of February, 1938.

O. E. BENHAM,

Clerk.

O. F. PRATT

Deputy.

(Seal)

[Endorsed]: Filed Feb. 4, 1938. [6]

[Title of District Court and Cause.]

NOTICE OF MOTION

To the plaintiff, United States of America, and to its attorney, E. P. Carville, United States Attorney, and his assistant, Thomas O. Craven, Reno, Nevada:

You and each of you will please take notice that the defendants, Garaventa Land & Livestock Company, a corporation, Joe Garaventa, Louise Gara-

venta, his wife, Frank Garaventa and William Garaventa, will move the court for an order to dismiss the bill of complaint herein upon the grounds stated in the motion to dismiss annexed hereto and made a part hereof.

That said motion will be made on Monday, May 9, 1938, at Carson City, Nevada, in the United States District Court for the District of Nevada, or as soon thereafter as the court will enter an order fixing a time for hearing said motion.

Dated: April 25, 1938.

(Signed) W. M. KEARNEY

Attorney for Defendants, Garaventa Land & Livestock Company, a corporation, Joe Garaventa, Louise Garaventa, his wife, Frank Garaventa and William Garaventa.

[Endorsed]: Filed April 28th, 1938. [7]

[Title of District Court and Cause.]

MOTION TO DISMISS

Come now the defendants, Garaventa Land & Livestock Company, a corporation, Joe Garaventa, Louise Garaventa, his wife, Frank Garaventa and William Garaventa, and on the records, pleadings and files in said cause, move the court to dismiss the bill of complaint filed herein upon the following grounds, to-wit:

I.

That it appears on the face of the bill of complaint that the plaintiff is not entitled to relief prayed for nor to any relief arising from the alleged facts as set forth in said bill.

II.

That it appears on the face of the bill of complaint that the same is wholly without equity.

III.

That it appears on the face of the bill of complaint that the court is without jurisdiction to grant the relief prayed [8] for in said bill nor any relief to the plaintiff upon the alleged facts.

IV.

That the purported cancellation of the entries referred to in paragraph IV. of the bill of complaint was and is null and void in this: That the Department of the Interior was and is without power to cancel the said entry and the purported cancellation was and is in excess of its jurisdiction so to do.

That upon the hearing of said motion, movents will use and rely upon all the papers, pleadings, files and records in the above-entitled case and the minutes of the court.

Dated: April 25, 1938.

(Signed) **W. M. KEARNEY**

Attorney for Movents.

It is stipulated that the foregoing Notice of Motion and Motion may be mailed for filing today so

as to be filed as of April 26, 1938, and Service of the foregoing Notice of Motion and Motion to Dismiss, by copy, is hereby admitted this 25th day of April, 1938.

E. P. CARVILLE

United States District Attorney

[Endorsed]: Filed April 26, 1938. [9]

In the District Court of the United States in and
for the District of Nevada

Minutes of Court

Wednesday, January 25, 1939

No. 2741

THE UNITED STATES,

vs.

GARAVENTA LAND & LIVESTOCK CO., a corporation, et al.

No. 2742

THE UNITED STATES,

vs.

J. A. CERASOLA, et al,

No. 2743

THE UNITED STATES,

vs.

W. J. CERASOLA, et al.

No. 2744

THE UNITED STATES,

vs.

M. P. DEPAOLI, et al.

No. 2745

THE UNITED STATES,

vs.

W. J. CERASOLA, et al.

Upon motion of Thomas O. Craven, Esq., Assistant U. S. Attorney, it is ordered that the motions to dismiss in the above-entitled cases be, and the same hereby are, overruled, and the defendants granted 10 days from and after this day within which to answer. [10]

[Title of District Court and Cause.]

MINUTES OF COURT

Thursday, January 26, 1939

Upon motion of Wm. S. Boyle, Esq., U. S. Attorney, it is ordered that the order made and entered on January 25, 1939, herein, overruling de-

defendants' motions to dismiss and giving said defendants 10 days within which to answer be, and the same hereby is, vacated and set aside. [11]

[Title of District Court and Cause.]

MINUTES OF COURT
of Wednesday, March 29, 1939

Defendant's motion to dismiss plaintiff's complaint having heretofore been submitted to and by the Court taken under advisement, It Is Ordered that defendants' motion to dismiss plaintiff's complaint be, and the same hereby is, denied. The defendants are granted an exception to the order upon the grounds stated in the motion. It Is Further Ordered that defendants be, and they hereby are, granted 20 days from and after this date within which to answer plaintiff's complaint. [12]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Garaventa Land & Livestock Company, a corporation, and for its answer to the complaint herein, admits, denies and alleges as follows, to-wit:

I.

That it appears on the face of the bill of complaint that the plaintiff is not entitled to relief prayed for nor to any relief arising from the alleged facts as set forth in said bill.

II.

That it appears on the face of the bill of complaint that the same is wholly without equity.

III.

That it appears on the face of the bill of complaint that the court is without jurisdiction to grant the relief prayed for in said bill nor any relief to the plaintiff upon the alleged facts. [13]

IV.

That the purported cancellation of the entries referred to in paragraph IV of the bill of complaint was and is null and void in this: That the Department of the Interior was and is without power to cancel the said entry and the purported cancellation was and is in excess of its jurisdiction so to do.

V.

For answer to paragraph I of the complaint, this defendant denies that the plaintiff at all the times mentioned in the complaint and/ or ever since the year 1848, or at any time subsequent to June, 1925, has been and/or now is entitled to the possession of the lands and/or premises described in paragraph I of the complaint, lying and being in the County of Washoe, State and District of Nevada, described as follows, to-wit:

T. 20 N., R. 24 E., M.D.M., Nevada, Sec. 4, NE SW, NW SW, SW SW, SE SW, S/2 SW NW, S/2 SE NW; Sec. 9, Lot 17, containing 236.14 acres.

This defendant admits, however, that the plaintiff is the holder of the legal title to said land, subject, however, to the contractual and other rights of the defendant hereinafter referred to.

VI.

For answer to paragraph II of said complaint, this defendant admits that on or about May 7, 1925, pursuant to that certain act of Congress of June 7, 1924, entitled:

“An Act for the Relief of Settlers and Townsite occupants of certain lands in the Pyramid Lake Indian Reservation,”

being Chapter 311, Public Laws of the United States of America, passed by the 68th Congress, 1922-1925, 596, and the regulations promulgated thereunder by the department of the Interior on [14] March 3, 1925, as amended, this defendant made application to the Department of the Interior to enter upon and purchase the hereinbefore described lands; and it admits that pursuant to said act and regulations, such application was allowed and said defendant did enter upon said lands and was required to pay plaintiff for said lands as the purchase price thereof, the total sum of Four Thousand and Five Dollars and Seventy Cents (\$4,005.70), plus interest accruing after June, 1925, at the rate of four per cent (4%) per annum on all unpaid principal. The defendant, Garaventa Land & Livestock Company, a corporation, denies each,

every and all the remaining allegations of said paragraph.

VII.

For answer to paragraph III of said complaint, this defendant admits that he has failed to pay said purchase price, or any part thereof, or the interest thereon, except the sum of One Thousand Eight Hundred Fifty-three Dollars and Ninety-two Cents (\$1,853.92), which said sum was paid on or about June, 1925. It denies, however, that it refused and neglected or refused or neglected to pay said purchase price or the interest thereon, or any part thereof, or the interest thereon, except said sum of One Thousand Eight Hundred Fifty-three Dollars and Ninety-two cents (\$1,853.92), and in this connection refers to the affirmative defense herein with reference to its offer to pay the said purchase price and the interest thereon.

VIII.

For answer to paragraph IV of said complaint, defendant, Garaventa Land & Livestock Company, a corporation, denies according to information and belief, each, every and all of the allegations contained in paragraph IV of said complaint, except that this defendant admits that during the month of March, 1926, it received [15] a letter by United States registered mail, containing a written notice purporting to cancel a contract of purchase entered into between defendant, Garaventa Land & Livestock Company, a corporation, and plaintiff.

IX.

For answer to paragraph V of the complaint, defendant denies each, every and all of the allegations contained in said paragraph, except the defendant admits that it is still in possession and occupancy of the lands described in paragraph I of the complaint, and has refused to vacate said lands and/or yield the same to plaintiff.

X.

For answer to paragraph VI of the complaint, this defendant admits each, every and all of the allegations therein contained.

XI.

For answer to paragraph VII of said complaint, the defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

Further answering said complaint and by way of further defense, the defendant, Garaventa Land & Livestock Company, a corporation, alleges:

I.

That ever since about the year 1865, the defendant, by itself, and through its predecessors and grantors in interest, has been in the possession of and actually occupied the lands described in the complaint as follows:

T. 20 N., R. 24 E., M.D.M., Nevada, Sec. 4,
NE SW, NW SW, SW SW, SE SW, S/2 SW

NW, S/2 SE NW; Sec. 9, Lot 17, containing 236.14 acres. [16]

That said defendant and its predecessors and grantors in interest have improved the said land and broken it from its raw desert condition and have constructed dams in the Truckee River and ditches leading therefrom to conduct water to the said lands for irrigation purposes; that they have constructed improvements on the said lands consisting of the following:

Houses for themselves and their families; barns, stables and corrals for their livestock; cellars for the storage of farm products; chicken houses for the care of fowl; that they have fenced the said lands to protect the same against trespass by livestock; that they have paid all taxes levied and assessed against the said premises, both as possessory claims and on the adjacent patented land as well as personal property taxes for the livestock kept thereon.

That at the time of the entry of said land by the grantors and predecessors of this defendant, the boundaries of said Pyramid Lake Indian Reservation had never been surveyed and were undetermined and that the said reservation had never been set apart as a reservation by presidential proclamation or otherwise and that said reservation boundaries were not surveyed or marked until the year 1874; that within the area fenced by the defendant and its predecessors in interest and bordering upon the said lands, there are lands to which

patent has been issued by the United States of America which forms a part of the ranch premises of the defendant and which patented areas are irrigated by means of the same ditches and dams as the lands referred to in the complaint, all as a single farm unit; that the said lands have been so occupied and improved by the defendant and its grantors and predecessors in interest for more than seventy years with the full knowledge, acquiescence and consent of the plaintiff. That at the time said lands were entered, the grantors of [17] defendant entered and located the same under the then existing land laws of the United States of America, which entitled settlers to enter surveyed and unsurveyed lands and to improve and cultivate the same as a condition precedent to obtaining a patent therefor. That all of the requirements and conditions of the land laws of the United States of America as to cultivation and improvement and other particulars have been fully met and complied with by the defendant; that to permit the said defendant to be ejected from the said premises at this time would be unjust and unconscionable; and that the plaintiff is guilty of laches.

Further answering said complaint and by way of further defense, the defendant, Garaventa Land & Livestock Company, alleges and shows to the court:

I.

That under and pursuant to the provisions of a certain act of the Congress of the United States of America of June, 1924, entitled:

“An Act for the Relief of Settlers and Town-site Occupants of Certain Lands in the Pyramid Lake Indian Reservation, Nevada”,

being Chapter 311, Public Laws of the United States of America, passed by the 68th Congress, 1923-1925, (43 Stats. 596, Chapter 311), the defendant, Garaventa Land & Livestock Company, a corporation, duly, regularly and timely entered into a contract to purchase the lands described in paragraph I of the complaint, to-wit:

T. 20 N., R. 24 E., M.D.M., Nevada, Sec. 4, NE SW, NW SW, SW SW, SE SW, S/2 SW NW, S/2 SE NW; Sec. 9, Lot 17, containing 236.14 acres,

for the total purchase price of Four Thousand and Five Dollars and Seventy Cents (\$4,005.70), plus interest at the rate of four per cent (4%) per annum after June, 1925. That after the making of [18] said contract of purchase, this defendant was granted an extension of time within which to complete the payment of the purchase price and interest on said contract; that during the financial depression commencing about the year 1930, this defendant found itself heavily in debt with all of its assets consisting of land and livestock heavily mortgaged, and with depreciated livestock values and farm products which existed at that time, it was impossible to obtain funds with which to pay the balance of said purchase price; that on representations to the plaintiff and a showing of the im-

possibility of obtaining funds while the livestock and farm products were depreciated in value and the defendant's property and assets were under heavy mortgage, further extensions of time were obtained to raise the money to complete said purchase price; that the defendant carried on negotiations to raise said purchase price and to refinance its said mortgages on the basis of said extensions of time and made sacrifices of its property to refinance and did so refinance and when the defendant obtained said funds and made an offer to pay the same, said funds were refused on the basis that the said contract had been canceled while negotiations to raise said money were pending:

II.

That this defendant has offered to pay to the plaintiff the said amount of purchase money, together with interest at the rate of four per cent (4%) per annum from June, 1925, but that the plaintiff has refused and still refuses to accept said payment; that the said payment has been tendered to the plaintiff through its duly constituted agents, to-wit: The Register and Receiver of the United States Land Office at Carson City, Nevada, but that the said officers refused to accept said payment and still and now refuse to accept the same; that the defendant has at all times [19] kept the said tender and payment good and still and now offers to pay the said purchase money, together with interest, in full.

III.

That under and by virtue of the terms of the Act of June 7, 1924, aforesaid, the said lands referred to in paragraph I of said complaint were set apart from the said Pyramid Lake Indian Reservation and do not now constitute a part thereof and that under the terms of the said act of June 7, 1924, the Secretary of the Interior was and is without authority to cancel the said contracts in the manner and form as alleged in the complaint or at all; and that the said contracts of purchase are still in full force and effect and that by virtue thereof, this defendant is entitled to the continued occupancy of said land.

Wherefore, this defendant prays that the said plaintiff take nothing by its said complaint; that the defendant be awarded judgment requiring the plaintiff to accept the said purchase moneys heretofore and now tendered in payment of and pursuant to the Act of June 7, 1924, 43 Stats. 596, Chapter 311, and that the plaintiff be ordered and directed to issue a patent to the defendant to said lands and for such other and further relief as to the court seems just and equitable.

W. M. KEARNEY

Attorney for Defendant, Garaventa Land
& Livestock Company, a Corporation.

[20]

State of Nevada,
County of Washoe—ss.

Joe A. Garaventa, being first duly sworn, deposes and says: That he is the President of Garaventa Land & Livestock Company, a corporation, one of the defendants above named; that he makes this verification for and on behalf of said defendant corporation; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

JOE A. GARAVENTA

Subscribed and sworn to before me this 25th day of April, 1939.

(Notarial Seal) GEORGIA NEWMAN

Notary Public in and for the County of Washoe,
State of Nevada.

My Commission expires May 22, 1940.

Service of the foregoing Answer, by copy, is hereby admitted this 28th day of April, 1939, and it is hereby stipulated that the same may be mailed to-day for filing.

WILLIAM S. BOYLE

United States Attorney

[Endorsed]: Filed April 29th, 1939. [21]

[Title of District Court and Cause.]

MINUTES OF COURT

of Wednesday, May 10, 1939

Upon the filing herein this day, by the U. S. Attorney, of request for default, it is ordered that the default of each of the defendants herein, save and except the defendant Garaventa Land & Livestock Company, be entered for their failure to answer plaintiff's bill of complaint. [22]

[Title of District Court and Cause.]

MINUTES OF COURT

January 6, 1940

At this time appears Miles N. Pike, Esq., U. S. Attorney, and John S. Halley, Esq., Assistant U. S. Attorney, attorneys for the plaintiff; and Messrs. Wm. M. Kearney and D. A. Busey, attorneys for the defendants herein. The Court suggests to counsel that the submission of these cases be vacated and that counsel consider the submission of further evidence applicable to these cases and to advise the Court in respect thereto within 30 days. Counsel for the respective parties agreeing thereto, it is so ordered. [23]

[Title of District Court and Cause.]

MINUTES OF COURT

Monday, July 1, 1940

This being the time heretofore fixed for the further trial of these cases to permit plaintiff to introduce additional evidence and the same coming on regularly this day, Thomas O. Craven, Esq., Assistant U. S. Attorney, appearing for and on behalf of the plaintiff; and no appearance by or on behalf of the defendants. Mr. Craven files "List of Additional Exhibits and Evidence" and offers in evidence the following exhibits, which are admitted subject to counsel for the defendants being allowed 30 days from and after this date to object to the same and offer additional testimony, to-wit: "AA" photostatic reproduction of decision in the case of Central Pacific Railway Company reported in the 45th Volume, Land Decisions pages 502, 503, 504, 505. "BB" Letters of May 13, May 18, 1865 and August 19, 1865, from the Commissioner of the General Land Office to the Surveyor General of California, in which the Commissioner advises the Surveyor General that "none of the lands hitherto known as the Truckee Reservation shall be open to sale and settlement, or interfered by the whites, except so far as the line of the Pacific Railway is concerned. "CC" Report No. 175, dated January 4, 1859, by [24] F. Dodge, Indian Agent. Report No. 31, dated October 22, 1866, by D. N. Cooley, Indian Agent, beginning on page 28 at "Nevada" and ending at "Utah", page 30. Report No. 32, dated September

1, 1870, by J. M. Lee, First Lieutenant, U. S. Army (Special Indian Agent for Nevada). Report of Joseph M. McMaster, Indian Agent, dated August 15, 1884, beginning at the bottom of page 126 and ending at top of page 128. Report of W. D. C. Gibson, U. S. Indian Agent, dated August 20, 1885, page 147. Report of Superintendent John B. Scott, dated August 29, 1889, page 249. Report of Superintendent S. S. Sears, dated August 27, 1890, beginning at the bottom of page 147 and continuing on page 148. Report of Superintendent C. C. Warner, dated August 17, 1891, pages 299 and 300. "DD" Plat approved Sept. 25, 1865, T. 20 N., R. 24 E. Survey executed before the Reservation was created. "EE" Plat approved Feb. 8, 1879. Closings on the Reservation boundary. "FF" Plat approved Jan. 19, 1888. Closings on the Reservation boundary. "GG" Plat approved Feb. 6, 1912. Resurvey, the lands within the Reservation. "HH" Plat-B approved Dec. 31, 1913. Shows culture and topography. "II" Plat-A approved Dec. 31, 1913. Areas and resurvey data. "JJ" Plat approved Nov. 1, 1935. Supplemental plat of Sec. 9, showing lottings. "KK" Plat approved Feb. 19, 1907, T. 21 N., R. 24 E. Survey of Portion of Area within the Reservation. "LL" Plat approved Feb. 25, 1908. Shows the lottings along the Reservation Boundary. "MM" Plat approved Feb. 6, 1912. Survey of portion of area within the Reservation. "NN" Plat-B approved May 15, 1913. Shows culture and topography. "OO" Plat-A approved May 15, 1913.

Area and resurvey data. "PP" Plat approved Oct. 20, 1937. Supplemental plat of Secs. 9 and 15, showing lottings. "QQ" Photographic copy of Map of Pyramid Lake Indian Reservation, Nev., surveyed in Jan. 1865 by Eugene B. Monroe. "RR" [25] 36th Congress, 1st Sess. 1859-60, Senate Executive Documents, Vol. 1, No. 2, title page and pages 730 to 750 inclusive, of the report of the Secretary of the Interior. "SS" 36th Congress, 2nd Sess. 1860-61, Senate Executive Documents, Vol. 2, No. 1, Title page and pages 68 to 106 inclusive, of the report of the Secretary of the War. "TT" 37th Congress, 2nd Sess. 1861-62, Senate Executive Documents, Vol. 1, No. 1, Pt. 1, title page and pages 616, 617, 618, 619 and 716 to 727 inclusive, of the report of the Secretary of the Interior. "UU" Report of the Commissioner of Indian Affairs for the year 1862, title page and pages 215 to 229 inclusive. "VV" Report of the Commissioner of Indian Affairs for the year 1863, Title page and pages 390, 391, 392, 393, 416, 417, 418 and 419. "WW" Report of the Commissioner of Indian Affairs for the year 1864, title page and pages 138 to 151 inclusive. "XX" Report of the Commissioner of Indian Affairs for the year 1865, title page and pages 14 to 17 inclusive. "YY" Report of the Commissioner of Indian Affairs for the year 1866, title page and pages 112 to 122 inclusive. "ZZ" Report on Indian Affairs by the Acting Commissioner for the year 1867, title page and pages 168 to 173 inclusive.

“A1” Annual report of the Commissioner of Indian Affairs for the year 1868, title page and pages 142 to 149 inclusive. “A2” (No. 1963) Letter of September 16, 1862, from James W. Nye to Commissioner of Indian Affairs; letter of June 27, 1864, from Jacob F. Lockhart to Commissioner of Indian Affairs; report of Governor James W. Nye, June 17, 1862, including a report of Warren Wasson, April 20, 1862; letter of June 25, 1863, from Jacob F. Lockhart to Commissioner of Indian Affairs with endorsement thereon of Orion Clemens, dated June 25, 1863; letter of March 17, 1863, from Jacob F. Lockhart to Commissioner of Indian Affairs. “A3” (No. 1964) Letter of July 8, 1860, from [26] F. Dodge to Commissioner of Indian Affairs including newspaper clippings; letter of March 15, 1864, from Jacob F. Lockhart to Commissioner of Indian Affairs, with endorsement broadside. “A4” (No. 1965) Letter of June 7, 1860, from F. Dodge to Commissioner of Indian Affairs, with enclosures dated June 25, 1860 and June 9, 1860; letter of August 9, 1860, from F. Dodge to Commissioner of Indian Affairs with enclosed broadside. “A4” No. 1965) Letter of June 7, 1860, from F. Dodge to Commissioner of Indian Affairs, with enclosure; letter of November 22, 1864, from Jacob F. Lockhart to James W. Nye; letter of November 25, 1859, from F. Dodge to Commissioner of Indian Affairs; letter of August 29, 1864, from Jacob F. Lockhart to James W. Nye; copy of letter of July 15, 1861, from Warren Wasson to James

W. Nye; letter of January 5, 1864, from Jacob F. Lockhart to James W. Nye; letter of June 23, 1860, from F. Dodge to Commissioner of Indian Affairs. "A5" (No. 1966) Copy of letter of November 29, 1859, from A. B. Greenwood, Commissioner, to F. Dodge; copy of a letter of November 29, 1859, from A. B. Greenwood, Commissioner, to Samuel A. Smith; copy of a letter of November 26, 1859, from A. B. Greenwood, Commissioner, to Secretary of the Interior. "A6" (No. 1986) Copy of Letter of July 7, 1891, from Geo. H. Shields to The Acting Secretary; letter of February 5, 1866, from J. W. Edmund to Commissioner of Indian Affairs with enclosure dated December 8, 1865; letter of June 27, 1865, from Jacob F. Lockhart; letter of September 12, 1860, from J. Thompson to Chs. E. Mix, with enclosure dated September 11, 1860; letter of May 14, 1866, from Jas. Harlan to Commissioner of Indian Affairs. "A7" (No. 1987) Letter of March 12, 1866, from J. W. Edmund to Commissioner of Indian Affairs; letter of October 23, 1865, from H. G. Parker to Commissioner of Indian Affairs; letter of June 7, 1865, from Jacob F. Lockhart to Commissioner [27] of Indian Affairs; letter of October 12, 1865, from Jacob F. Lockhart to Commissioner of Indian Affairs. "A8" (No. 1989) Copy of a letter of August 30, 1860, from Charles E. Mix to F. Dodge; copy of a letter of May 12, 1866, from D. N. Cooley to Secretary of the Interior; copy of a letter of May 26, 1866, from D. N. Cooley to H. G. Parker, copy of letter of August 29, 1860, from J.

Thompson to Secretary of War. "A9" (No. 1990) Letter of March 28, 1866, from H. G. Parker to Commissioner of Indian Affairs; letter of May 10, 1866, from H. G. Parker to Commissioner of Indian Affairs. "A 10" (No. 1993) Map No. 944, Tube 926, part of Pyramid Lake Reservation, Nevada. "A11" (No. 1994) Map No. 915, Tube 45, covering area between Lake Tahoe and Pyramid Lake. "A12" (No. 1995) Map No. 6788, Tube 780, covering Sections 5, 8, 9, 15, 16, 21, 22, 23, 27, 28, 32, 34 and 38 of Township 21 North, Range 24 East and Sections 3, 4, 5, 8, 9 and 10, Township 20 North, Range 24 East. "A13" (No. 1996) Map No. 8528, Tube 1229, Pyramid Lake Indian Reservation, Nevada. "A14" (No. 1997) Map No. 776, (No. 2) Tube 275, covering area in townships 20 to 29 North, inclusive, Mount Diablo Baseline, Ranges 20 to 25 East, Mount Diablo Meridian. "A15" Sam Davis' History of Nevada. "A16" Laws of Nevada Territory, 1862-1864, p. 196. Memorial to Congress of December 19, 1862, relative to the expenses incurred by the territory of Nevada on account of Indian depredations and in protecting the white settlements. "A17" Statutes of Nevada for 1867, pages 183 & 184. Resolution of March 29, 1867, which authorizes the Governor to make up and forward to the United States Senators and Congressman from Nevada a true and correct statement of the amount of expenditures incurred by the State of Nevada in paying soldiers in the service of the National Government and in suppressing Indian

disturbances. "A18" Act of March 4, 1929 (45 Stat. pt. 2, [28] ch. 723, p. 2378) Secretary of Treasury authorized and directed to pay to the State of Nevada \$595,076.53 in full settlement of all advances and expenses, and interest thereon, made by the State. "A19" Senate Document No. 210, p. 2278, Vol. 70, Pt. 2, Congressional Record, 70th Congress, Second Session."

Mr. Craven requests and is granted the right to later file a photo-stat copy of opinion by Assistant Attorney General Shield of date of July 7, 1891.

[29]

[Title of District Court and Cause.]

ORDER

Upon motion of Thomas O. Craven, Assistant United States Attorney, and good cause appearing therefor,

It is hereby ordered that a certified photostatic copy of the original "Map of Utah Territory Showing the Routes Connecting it with California and the East, Compiled in the Bureau of Topographical Engineers of the War Department from the Latest and Most Reliable Data, 1858", and a certified photostatic copy of a letter dated November 25, 1859 addressed to Honorable A. B. Greenwood, Commissioner of Indian Affairs from F. Dodge, Indian Agent of Nevada, be and the same hereby are ordered admitted into evidence in the above entitled

matters, subject, however, to the right of the defendants, upon good cause shown within thirty (30) days to move that the same be stricken from evidence.

Dated August 31st, 1940.

FRANK H. NORCROSS

U. S. District Judge

[Endorsed]: Filed Aug. 31st, 1940. [30]

[Title of District Court and Cause.]

OBJECTIONS BY DEFENDANTS' TO OFFERS IN EVIDENCE BY PLAINTIFF'S OF ADDITIONAL EXHIBITS AND EVIDENCE

Defendants' object to the introduction in evidence of each of plaintiff's exhibits from AA to ZZ inclusive and to each of plaintiff's exhibits from A-1 to A-21 inclusive upon the following grounds:

That each of said exhibits is argumentative, self serving, incompetent, irrelevant and immaterial and no proper foundation has been laid for introduction into evidence of any said exhibits.

Defendants' also object to exhibits AA, BB, CC, RR, SS, TT, UU, VV, WW, XX, YY, ZZ and exhibits A-1 to A-9 inclusive, A-15, A-19 and A-20 upon the following grounds:

That each of such exhibits are conclusions of fact conclusions of law and opinion evidence.

Defendants' also move to strike each and all such exhibits from evidence upon the same grounds as above stated for the objections to the offer of each said exhibits in evidence.

Dated: September 30, 1940.

W. M. KEARNEY

Attorney for Defendants in
Cases #2741 and 2744

DOUGLAS A. BUSEY

Attorney for Defendants in
Cases #2742, 2743 and 2745

[Endorsed]: Filed Sept. 30, 1940. [32]

Douglas A. Busey
Attorney and Counselor at Law
16 17 City Hall Building
Reno, Nevada.

October 2, 1940

Otto E. Benham, Clerk
United States District Court,
Carson City, Nevada

Dear Mr. Benham:

On Monday I filed in your office a document entitled "Objections by Defendants' To Offers in Evidence of Plaintiff's Additional Exhibits for Evidence." The title of this document should read: "Objections by Defendants' to Offers in Evidence by Plaintiff's of Additional Exhibits and Evidence."

In line 20 the word "open" should read "opinion".

Will you please call this letter to the attention of the Court.

Very truly yours,

/s/ DOUGLAS A. BUSEY

DAB:la

Received Oct 4 1940 Clerk's Office [33]

[Title of District Court and Cause.]

OFFERS OF ADDITIONAL EXHIBITS
AND EVIDENCE

Exhibit 7.

Memorial to Congress. "Relative to the Depredations committed by Indians in the Territory of Nevada, and the expenses incurred in the protection of the settlements." Statutes of Nevada 1862, page 196.

Exhibit 8.

Joint Resolution No. XV passed March 7, 1865. Statutes of Nevada 1864-5, page 462.

Exhibit 9.

Senate Memorial and Joint Resolution relating to Indian Depredations No. III passed January 23, 1866. Statutes of Nevada 1866, page 267.

Exhibit 10.

Memorial No. XXIV passed March 1, 1873, Statutes of Nevada, 1873, page 237.

Exhibit 11.

Joint Memorial and Resolution relating to Pyramid Lake Reservation in the State of Nevada No. IX passed January 29, 1877, Statutes of Nevada, 1877, page 215.

Exhibit 12.

Senate Joint Memorial and Resolution relating to Pyramid Lake Reservation No. VIII passed February 6, 1885. Statutes of Nevada 1885, page 143.

Exhibit 13.

“An Act Relating to the Proving of Indian War Claims”. Approved February 27, 1885. Chapter XLVI Statutes of Nevada 1885, page 47.

Exhibit 14.

“An Act Relating to the Proving of Indian War Claims”. Chapter XXXV. Approved February 8, 1887. Statutes of Nevada 1887, page 40.

Exhibit 15.

“An Act Relating to the Proving of Indian War Claims”. Chapter XXIX. Approved February 13, 1889. Statutes of Nevada 1889, page 32. [35]

Exhibit 16.

“An Act Relating to the Proving Up of Indian War and Indian Depredation Claims”. Chapter CX. Approved March 17, 1903. Statutes of Nevada 1903, page 205.

Exhibit 17.

Memorial and Joint Resolution relating to Pyramid Lake Reservation No. VIII, passed March 6, 1903, Statutes of 1903, page 228.

Exhibit 18.

Senate Joint Resolution No. 4 approved February 14, 1929. Statutes of 1929, page 429.

Exhibit 19.

Senate Joint Resolution No. 31 Statutes of Nevada 1937, page 571.

W. M. KEARNEY

Attorney for Defendants in
Cases #2741 and #2744

DOUGLAS A. BUSEY

Attorney for Defendants in
Cases #2742, 2743, and 2745

It is hereby stipulated by and between Plaintiff's attorney and the attorneys for the respective Defendants that the Resolutions, Memorials and Statutes above offered in evidence may be offered by reference only to the Statute book and page number thereof where such Statute, Resolution or Memorial may be found.

Dated: October 18, 1940.

THOMAS O. CRAVEN

Attorney for Plaintiff.

W. M. KEARNEY

DOUGLAS A. BUSEY

Attorneys for Defendant.

[Endorsed]: Filed Oct. 19th, 1940. [36]

[Title of District Court and Cause.]

MINUTES OF COURT

of Monday, January 6, 1941

Upon motion of Thomas O. Craven, Esq., Assistant United States Attorney, and opposing counsel stipulating and agreeing thereto, it is ordered, subject to the further order of the Court, that these cases will stand submitted, with the understanding that the objections made by both sides as to the admissibility of the evidence can be ruled upon at the time such matters are decided on the merits.

[37]

[Title of District Court and Cause.]

MINUTES OF COURT

of Saturday March 8, 1941

This case having heretofore been tried, submitted to and by the Court taken under advisement, it is ordered that judgment enter for the defendants. The Court now files written opinion. At the request of Miles N. Pike, Esq., United States Attorney, an exception to this ruling is noted for counsel for the plaintiff. [38]

Filed March 8th, 1941.

O. E. BENHAM,

Clerk.

By,

Deputy.

In the District Court of the United States of
America, in and for the District of Nevada
No. 2741.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARAVENTA LAND & LIVESTOCK COM-
PANY, a corporation, et al.,

Defendants.

OPINION AND DECISION

Norcross, District Judge.

This is an action to recover possession of certain lands, containing 236.14 acres, within the exterior boundaries of the Pyramid Lake Indian Reservation. Basis of recovery is alleged failure to comply with the provisions of the Act of Congress of June 7, 1924, entitled "An act for the relief of settlers and town-site occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada," 43 U. S. Stats. 596, Title 25, U. S. C. A., p. 344, and regulations promulgated thereunder. Section 1 of said Act provides:

"That the Secretary of the Interior is hereby authorized to sell to settlers or their transferees, under such terms, conditions, and price per

acre as the said Secretary may prescribe, any lands * * * that have been settled upon, occupied, and improved by said settlers and their transferees in good faith for a period of twenty-one years or more immediately preceding the passage of this Act: * * * Provided further, That said sales shall be by private cash entry after it has been shown * * * that the lands applied for have been settled upon, occupied, and improved as required by this Act. * * * The proceeds of said sales shall be * * * for the Piute Indians of the said Pyramid Lake Indian Reservation.” [39]

Section 2 of said Act deals with sales of lands in the town of Wadsworth within said Reservation.

Section 3 provides:

“That titles to lands * * * acquired by patents heretofore issued by the United States to any railroad company, individual, or the State of Nevada, or by certification of the State of Nevada, are hereby confirmed.”

Section 4 provides:

“All sales in accordance with section 1 of this Act shall be made through the local land office within ninety days after the price of the land shall have been fixed by the Secretary of the Interior: Provided, That where entry is not made within the time specified, the United States shall enter upon the premises and take possession thereof for the use and benefit of the

Piute Indians of the Pyramid Lake Indian Reservation.”

The complaint alleges that on or about May 7, 1925, pursuant to said Act and the Regulations promulgated thereunder, the Defendant, Garaventa Land and Livestock Company, made application to the Department of Interior to enter upon and to purchase the lands in question, and, pursuant to said Act and Regulations, such application was allowed, and said defendant did enter upon said lands and was required to and did agree to pay plaintiff therefor, as purchase price thereof, the total sum of \$4,005.70, plus interest at 4% per annum on all unpaid principal, such interest to be paid on or before April 10, 1936. That said defendant has failed, refused and neglected to pay said purchase price or interest, except the sum of \$1,853.92, which sum was paid on or about June, 1925, and defendant has paid no further sum on said purchase price since said date. That on or about May 13, 1936, the entry of said defendant upon said lands, and its right to purchase the same, was cancelled by the Department of the Interior, pursuant to the terms of said Act and said Regulations, and on March 10, 1936, said defendant was served with written notice of such cancellation. [40]

The answer filed by defendant corporation denies refusal and/or neglect to pay said purchase price or the interest thereon, except said sum of \$1,853.92, and alleges that ever since the year 1865, the de-

fendant, by itself, and through its predecessors and grantors in interest has been in possession and actual occupation of the lands described, improved the same and diverted water from the Truckee River by means of dams and ditches for irrigation purposes and constructed improvements thereon consisting of houses, barns, stables, corrals and enclosed the same with fence. That at the time of original entry upon said land by the grantors and predecessors of defendant, the boundaries of said Reservation had never been surveyed and were not so surveyed or marked until the year 1874. That after making said contract of purchase, pursuant to said Act of 1924, defendant was granted an extension of time within which to complete the payment of the purchase price and interest. That during the financial depression, commencing about the year 1930, defendant found itself heavily in debt and impossible to obtain funds with which to pay the balance of said purchase price. That further extensions of time were obtained to raise the money to complete said purchase price. That defendant carried on negotiations to raise said purchase price and when defendant obtained said funds and made an offer to pay the same, said funds were refused on the basis that the said contract had been cancelled. That defendant has offered to pay to plaintiff the said amount of purchase money together with interest and has tendered the same to the Register and Receiver of the United States Land Office at Carson City, Nevada, but said officers refused to accept said

payment and still and now refuse to accept the same; that the defendant has at all times kept the said tender and payment good and still and now offers to pay the said purchase money, with interest, in full. [41] Defendant prays judgment that plaintiff take nothing by its complaint; that defendant be awarded judgment requiring plaintiff to accept the said purchase moneys heretofore and now tendered and that patent be directed to be issued to defendant for said lands and for such other and further relief as to the Court seems just and equitable.

This and other similar actions, consolidated for hearing, presents the question of the legal rights of the respective parties to certain lands within the exterior boundaries of the Pyramid Lake Indian Reservation.

The lands in question, in the main, have been continuously occupied and improved by defendants and their grantors and predecessors in interest for the past seventy or more years, the earliest occupation of settlers thereon being about the year 1863, and a number were made in 1865 and 1866. Water rights on lands involved in two of the cases are of dates 1880 and 1890. The Reservation was officially established by proclamation of President Grant, March 23, 1874. In 1859, the Indian Superintendent located at Salt Lake City, Utah, recommended to the Superintendent of Indian Affairs at Washington, D. C. that Pyramid Lake and Walker Lake, with adjacent lands surrounding, in then Western

Utah Territory, be set apart and reserved as and for Reservations for Indians residing in the vicinity thereof. This recommendation was approved and the Secretary of the Interior and the Commissioner of the General Land Office advised accordingly. No further official action appears to have been taken respecting said Reservations until the President's Proclamation in 1874. In the case of *United States v. Walker River Irrigation District*, 104 F. 2d. 334, 338, the Circuit Court of Appeals of this Circuit held that the executive order of President Grant of 1874, related back to 1859, and is controlling in this case. See also decision of this Court in the same case to the same effect, 11 F. Supp. 158, 162. [42]

It is a matter of well known history that following the settlement of white colonists on the American continent prior to the Revolution and subsequent thereto for more than a century, differences arose between the Indian inhabitants and the white settlers respecting their claimed respective rights to the occupied domain. Instances where actual warfare followed are numerous. The section of the Nation acquired by the Treaty of Guadalupe Hidalgo, concluding the Mexican War, was subject to the same conditions. The discovery of gold in California in 1848, attracted emigrants in large numbers to that section. From the Indian's point of view, the white emigration interfered with their prior rights of possession, particularly, rights to maintain a

livelihood from hunting, fishing and other natural products.

President Grant, who issued the Executive Orders of May 24, 1874, affirming the establishment of the Pyramid Lake and Walker Lake Indian Reservations, had served as commanding officer at a fort established at Humboldt Bay, California, in the early 50's, to deal with the Indian situation in that section and, hence, was familiar with the situation in the far West generally including that of the then Territory of Utah. In his message to Congress of December 7, 1874, he said,

“The policy adopted for the management of Indian affairs, known as the peace policy, has been adhered to with most beneficial results. It is confidently hoped that a few years more will relieve our frontiers from the danger of Indian depredations.”

The Indian situation in the Territory of Utah in 1859, and thereafter in the Territory and State of Nevada, is quite fully covered in the opinion of Judge St. Sure, 11 F. Supp. 162, cited *supra*. Reference here will be made only to the fact that by reason of occurrences in 1859, two engagements occurred in 1860, within what later was determined to be within the confines of the Reservation known respectively as the [43] First and Second Battle of Pyramid Lake. In the First the Indians were victorious and in the Second they were defeated. In 1863, three several calls were made on the Governor

of the Territory of Nevada to raise troops to aid in keeping open the overland stage and emigrant route to California, threatened with closure by warring Indians.

By Acts of Congress of 1862 and 1864, provision was made for the extension of a railroad system to the Pacific Coast, in aid of which, land grants were made for a two hundred feet right of way and odd numbered sections of the public domain for a width of twenty miles on each side of the right of way. The Central Pacific Railroad was completed in 1869, and crossed the southern portion of the Pyramid Lake Indian Reservation. A railroad division point was established at Wadsworth within the exterior boundaries of said Reservation. The State of Nevada was admitted in 1864 and its enabling act provided a grant of the 16th and 36th sections of each township. Lands within the Reservation so granted to the State and Central Pacific Railroad have been recognized as not affected by any prior withdrawal in respect to the said Reservation.

At the time of the Admission of the State of Nevada into the Union of States, October 31, 1864, there had been no surveys of public lands within its confines. Such surveys were not begun until about the year 1866. The discovery of the Comstock Lode in 1859 was the occasion of a rapid increase of population in the adjacent territory. This occasioned a demand for agricultural products which the region was able to produce. The State being within the arid region, irrigation was necessary for substantial de-

velopment of lands available for such reclamation. White settlers entered upon such lands in Western Nevada and diverted waters from the Truckee, Carson and Walker Rivers for the irrigation thereof. The Federal land laws then recognized such original locators to have a prior right to [44] acquire patent to such lands when surveyed and open to entry in a Federal Land Office. The lands here in question were so settled upon and improved. Where, without the knowledge of the settler, the land had theretofore been withdrawn from entry, it was the common practice to permit the settler, notwithstanding such withdrawal, to obtain title or to aid him in acquiring other lands in substitution. The settler, however, possessed no enforceable rights therein adverse to the Government.

The Federal Reclamation Act of June 17, 1902, as revised and amended in 1924, 43 Stat. 701, T. 43 U.S.C.A. Sec. 371 et seq., made provision for Federal aid in the reclamation of arid lands. The first Project established under this law, July 2, 1902, is known as the Truckee-Carson or Newlands Project. Following its establishment, two suits were instituted in this Court by the United States as Plaintiff to determine prior existing water rights on both the Truckee and Carson Rivers. The Project was located near Fallon approximately thirty miles from the southerly end of Pyramid Lake Indian Reservation. In what is known as the Truckee River Suit, a temporary restraining order was entered February 13, 1926, making a preliminary determination

of the then existing water appropriations theretofore made upon said River, designated Claim No. 1 etc. to No. 744. Claims Nos. 1 to 4, inclusive, relate to rights of the United States under the general designation "Government Right," Claim No. 1, subheaded: "Indian Ditch," deals with water rights "for the use and benefit of the Indians" on said Reservation to the extent of 3130 acres. Claim No. 2, subheaded "Indian Allotments," deals with water rights for such allotments when made. Claims Nos. 3 and 4 deal with the construction of a dam and canal and storage in Lake Tahoe for the Project in general. The said Restraining Order deals with the Defendant herein and defendants in other similar [45] pending actions, occupying lands within said Reservation, in the same manner as other land owners and water claimants without the limits of the Reservation.

It has been urged upon the part of the defendants in the several actions that plaintiff is not entitled to recover because the equities are in favor of the several defendants. The Court's attention has been called to a memorandum addressed to the Secretary of the Interior by the Commissioner of Indian Affairs of date December 19, 1929, and appearing in the printed report of hearings before the Committee on Indian Affairs, United States Senate in the year 1937 on Senate Bill 840, a portion of which reads:

"The white settlers have only such legal rights as were extended to them by the Act of

June 7, 1924, but their equities are unquestioned and in view of all the facts and circumstances of this case, not one of them may be charged with bad faith, and this without regard to whether the reservation be considered as established by the Commissioner's letter of 1859, the departmental withdrawal of 1861, or the Executive Order of the President in 1874. The Indians were not in possession when the white settlements were made, the boundary lines of the reservation were not clearly established, the Government offered no opposition to the settlers, and their claims were bought and sold much in the manner of privately owned lands. The new purchasers took possession, and no objection appears to have been raised by the Government."

It is the conclusion of the Court that it is unnecessary to consider the question of the equities of the case otherwise than any possible bearing which they may have in the construction of the statute in question. The statute, by section 1, confers power in the Secretary of the Interior "to sell to settlers or their transferees, under such terms, conditions, and price per acre as the said Secretary may prescribe * * *; Provided further, That said sales shall be by private cash entry * * * ." By section 4, it is provided that all sales * * * shall be made through the local land office within ninety days after the price of the land shall have been fixed by the Secre-

tary of the Interior; Provided, That where entry is not made within the time specified, the United States shall enter upon the premises and take possession thereof * * * .”

The use of the words “terms” and “conditions,” clearly show that in order to effect an entry upon the occupied lands where, as in this case, the total price therefor is not required to be paid in full at one time but a part cash payment only is required and time or times allowed for subsequent cash payments with interest to accrue thereon, a prescribed cash payment on account of the total purchase price, made within the ninety days period, effects an entry within the clear meaning of the statute. We here have a special statute to consider dealing with an unusual situation respecting the public lands. The statute requires that sales shall be made through the local land office within ninety days after the price of the land shall have been fixed and that where entry is not made within the time specified, the United States shall enter upon the premises and take possession thereof. Where, as in this case, under the terms and conditions of the sale, an initial part payment only was required, then, unless that part payment be deemed to constitute the “entry” required to be made within ninety days, then a legal entry, under the terms and conditions as prescribed by the Secretary of the Interior would not be effected although subsequent payments were made within the times specified. In the view of the Court, the statute was correctly construed by the

Secretary of the Interior in this respect and that the partial payment made constituted entry within the meaning of the statute. Another consideration supporting this view is that the statute placed no limitations on the sale price to be fixed by the Secretary and the price as fixed was in excess of those required in ordinary sales of land within the public domain. The initial payment was in excess of such amount. [47]

We come now to the question whether a subsequent default or defaults in deferred payments would present a condition which would require the United States to "enter upon the premises and take possession thereof." This requirement, however, only exists "where entry is not made within the time specified." Such default or defaults would not require such drastic remedy to fully protect the interests of the United States in the sale agreement. We are here dealing with a special statute authorizing land sales "under such terms, conditions and price as the said Secretary may prescribe." If, as in this case, an agreement of sale is entered into and part payment made, default in other payments may be enforced and, if not otherwise paid with interest and costs all interest or equities in the land in question would be liable therefor and if payments not made, all equities of the settler could be terminated. Delay in payments, according to the answer, were due to financial difficulties occasioned in whole or in part by the depression. As soon as money could be raised it was tendered. It is not the

policy of the Government to enforce strictly the provisions of the land laws against settlers on the public domain where circumstances, like those occasioned during a period of depression, may make it difficult for such settlers to comply. See statutes dealing with such conditions during the years 1929 to 1936, inclusive, in so far as homestead settlers or entrymen were concerned. T. 43 U.S.C.A., Secs. 237a to 237e.

It is the conclusion of the Court that plaintiff is not entitled to the judgment prayed for in the complaint or any judgment in this action; that the defendant is entitled to judgment to the effect that its tender be accepted and that it is entitled to receive patent for said land. It is, therefore, ordered that judgment be entered accordingly.

Dated this 8th day of March, 1941.

(Signed) FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed March 8th, 1941. [48]

(Title of District Court and Cause.)

NOTICE OF MOTION.

To the Above-Named Defendants, and to Wm. M. Kearney, Esq., Their Attorney:

You and Each of You Will Please Take Notice: That the plaintiff will, by its attorneys, at the Court-room of the above-entitled Court, in the Federal Building, Room 310, at Reno, Washoe County, State and District of Nevada, on Friday, the 11th day of April, 1941, at the hour of 2:00 o'clock P. M. of said day, or as soon thereafter as counsel can be heard, move said Court to reconsider its Opinion and Decision filed in the above-entitled cause on March 8, 1941.

That said Motion will be made upon the grounds and for the reasons as set forth in the written Motion filed in the above-entitled Court and cause, a true and correct copy of which motion is attached hereto, and made a part hereof.

You Will Further Take Notice: That at the hearing of said Motion, counsel will rely upon all of the pleadings and [49] other papers on file in said cause, upon said Motion, and upon this Notice of Motion.

You Will Further Take Notice: That the relief sought by said Motion is for the Court to reconsider its said Opinion and Decision, and for an Order that a judgment be rendered for and on behalf of plaintiff.

Dated: This 3rd day of April, 1941.

MILES N. PIKE,

United States Attorney.

Due receipt and service of the foregoing Notice of Motion, and Motion, by copy, is hereby admitted this 3rd day of April, 1941.

WM. M. KEARNEY.

[Endorsed]: Filed April 3rd, 1941. [50]

(Title of District Court and Cause.)

MOTION FOR RECONSIDERATION OF
OPINION AND DECISION

Filed March 8, 1941.

Comes now the United States of America by its attorneys and moves this honorable court to reconsider its opinion and decision filed in the above-entitled cause on March 8, 1941, and for reason therefor says:

1. That the court is without jurisdiction to enter a judgment requiring the United States of America to accept defendants' tender or to issue a patent to the defendants, since the United States has not consented to be sued.

2. That the order for judgment is erroneous and contrary to law in that it concedes the existence of rights in the United States, but refuses enforcement of those rights, and by operation of the doctrine of res judicata destroys those rights.

3. That the order for judgment denying relief

to the United States but requiring the acceptance of defendants' tender and the issuance of a patent to defendants is erroneous and contrary to law, since it leaves defendants without [51] obligation to renew their tender and leaves the United States without power to compel payment or, in the alternative, to recover the land.

4. That the order for judgment is erroneous and contrary to law in that it denies to the United States the relief to which it is entitled, namely, the possession of the land in suit.

UNITED STATES OF AMERICA
By MILES N. PIKE

United States Attorney for
the District of Nevada.

Service of copy admitted this 1st day of April,
1941.

W. M. KEARNEY

[Endorsed]: Filed April 2, 1941. [52]

[Title of District Court and Cause.]

MINUTES OF COURT
of Monday, June 2, 1941

Plaintiff's Motion for Reconsideration of Opinion and Decision having been argued, submitted on briefs and by the Court taken under advisement, it is ordered that plaintiff's motion for reconsideration of opinion and decision be, and the same hereby is, denied. An exception to this ruling is granted counsel for the plaintiff. [53]

[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now comes the plaintiff in the above-entitled action and requests the court to enter findings of fact and conclusions of law in this case pursuant to Rule 52(a) and suggests and requests that the court enter the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This is an action brought by the United States to recover land now occupied under a claim of ownership by the defendant Garaventa Land & Livestock Company and which consists in the following parcels:

T. 20 N., R. 24 E., M. D. M., Nev., Sec. 4 NE SW, NW SW, SW SW, SE SW, S $\frac{1}{2}$ SW NW, S $\frac{1}{2}$ SE NW, Sec. 9, Lot 17, containing 236.14 acres.

These tracts of land are located within the boundaries of the [54] Pyramid Lake Indian Reservation, which was created on November 29, 1859, by executive order.

2. On June 7, 1924, the defendant, Garaventa Land and Livestock Company was in possession of the lands and it and its grantors and predecessors in interest had been in possession for sixty or more years, the earliest occupation of settlers thereon being about the year 1863 and after the withdrawal

of the lands from the public domain by the establishment of the Pyramid Lake Indian Reservation.

3. The defendant has never paid the United States anything for the use and occupancy of the lands.

4. The defendants have never established or sought to establish any rights to the land under any act of Congress except that approved on June 7, 1924 (43 Stat. 596).

5. On February 7, 1925, the First Assistant Secretary of the Interior approved the report of examiners appointed to classify and appraise the lands above described which report contained an appraisal of the lands at \$7,395.70. The Assistant Secretary ruled that the claimants should have 90 days from February 7, 1925, within which to pay the appraised price of the land to the Register and Receiver of the General Land Office, together with the fees and commissions.

6. On May 1, 1925, the following telegram of the Commissioner of the Land Office, approved by the Secretary of the Interior, was sent to the Register and Receiver at Carson City, Nevada:

Referring to Regulations of March 3, 1925, Pyramid Lake Indian lands allow settlers making application on or before May 8, 1925, to pay all cash or one-fourth down balance in three equal annual installments with interest on deferred installments at five percent per annum. [55]

On May 7, 1925, the Secretary of the Interior wired the Register and Receiver of the General Land Office in Carson City, Nevada, the following:

Matter Pyramid Lake lands, settlers required to pay one-fourth down with application. If any applications filed by people unable to make full one-fourth payment tomorrow, you are authorized to receive payment of such part of amount as they are able to make, if accompanied by promise to raise additional amount and pay same within 30 days. In such cases, receive and suspend the application pending payment of the full one-fourth within the specified time.

Pursuant to such appraisements and revised regulations the defendant, Garaventa Land & Livestock Company made application on May 7, 1925, to purchase the described land and filed the affidavits required by the regulations of the Department of the Interior, and paid \$1,853.92, which was \$5.00 more than one-fourth of the purchase price. On September 16, 1925, the General Land Office allowed the application. To date no further payment or tender of payment on this entry has been made by the defendant company.

7. On December 29, 1931, the defendant company received notification by mail that the Commissioner required payment of one-third of the deferred payments together with one-third of the accrued interest on or before January 31, 1932, and the balance to be paid in two equal annual installments. The letter further stated that if the first payment

was not made on or before January 31, 1932, or an appeal filed, the purchase would be cancelled and the money already paid in forfeited. No payment was made pursuant to this letter.

On November 30, 1934, the Department reduced the purchase price to \$4,005.70 and reduced the interest from 5 percent to 4 percent retroactively to December 31, 1934, and the original payment was to be applied to the reduced purchase price. On May 24, [56] 1935, a notice was again sent to the defendant company notifying it that if it failed to make payment within thirty days of the reduced purchase price, with interest, or interest alone, or an appeal taken, the entries would be cancelled and all moneys previously paid forfeited. No payment was made, but an appeal was taken on the ground that since the appraisal of the land the value had greatly depreciated so that the appraisals now exceeded the market value of the land. Upon the appeal the First Assistant Secretary of the Interior ruled: (1) that all interest must be paid within thirty days, (2) that one-third of the unpaid principal must be paid within six months, (3) that the unpaid principal would be computed on the basis of the reduced purchase price and (4) that interest would be computed by the General Land Office from the date of default.

8. On March 10, 1936, the defendant company received from the Commissioner a letter stating:

A recomputation shows \$2,151.78 purchase money due and unpaid as of September 16,

1928, together with interest at four percent from September 16, 1926, to date of payment which, if the principal is not paid until March 31, 1936, will amount to \$701.09.

The same letter advised that the defendant company was allowed thirty days within which to pay the \$701.09, in default of which payment the entries would be cancelled without further notice from the General Land Office. On May 13, 1936, no payment having been made, the Commissioner of the General Land Office cancelled the entries. By letter dated June 2, 1936, the defendant company was given notice, received by it on June 5, 1936, to vacate on or before September 30, 1936, the lands covered by its entry.

CONCLUSIONS OF LAW

I.

Under the Act of June 7, 1924, the defendant was entitled [57] to purchase the land by cash entry within 90 days of February 7, 1925, the date of approval of the appraisal by the First Assistant Secretary of the Interior.

II.

The extensions of time for payment granted by the Secretary of the Interior, if they had any effect at all, merely deferred the operation of the provision of the Act of June 7, 1924, requiring the United States to enter upon and take possession of

the land upon the failure of the defendant to comply with the statute. Upon the expiration of the last extension and the failure of the defendant to comply with the statute the rights of the defendants terminated and it became the duty of the United States to take possession of the land as required by the statute. This suit was properly brought for that purpose.

III.

The United States is entitled to judgment as prayed in its complaint.

Respectfully submitted,

THOMAS O. CRAVEN

Asst. United States Attorney
for the District of
Nevada

[Endorsed]: Filed June 4, 1941. [58]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Garaventa Land and Livestock Co., a corporation, Joe Garaventa, Louise Garaventa, his wife, Frank Garaventa and William Garaventa, First Doe, Second Doe, Third Doe and Fourth Doe, the above named defendants, and William M. Kearney and Douglas A. Busey, their attorneys.

You and Each of You will take notice that the plaintiff, United States of America, hereby appeals

from the judgment rendered in the above entitled court and cause on the 8th day of March, 1941, and the whole thereof, to the Circuit Court of Appeals for the Ninth Circuit.

Dated: June 7, 1941.

MILES N. PIKE

United States Attorney

By: THOMAS O. CRAVEN

Ass't. U. S. Attorney

[Endorsed]: Filed June 7, 1941. [59]

[Title of District Court and Cause.]

MOTION.

Comes Now the Plaintiff, the United States of America, by and through Miles N. Pike, United States Attorney, and moves the above entitled Court for an Order extending its time to, and including, the 4th day of September, 1941, for filing the Record on Appeal in the above-entitled cause with the United States Circuit Court of Appeals for the Ninth Circuit, and the docketing of said above-entitled cause therein.

MILES N. PIKE

United States Attorney

Attorney for Plaintiff

303 Federal Building

Reno, Nevada

[Endorsed]: Filed June 30, 1941. [60]

[Title of District Court and Cause.]

ORDER.

On Motion of Miles N. Pike, United States Attorney, and good cause appearing therefor, It Is Hereby Ordered that the Plaintiff, the United States of America, have to, and including, the 4th day of September, 1941, within which to file with the United States Circuit Court of Appeals for the Ninth Circuit the Record on Appeal in the above-entitled action and the docketing of said action therein.

Dated at Reno, Nevada, this 30th day of June, 1941.

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed June 30, 1941. [61]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

This action was filed by the United States in the above-entitled court on the 4th day of February, 1938, for the recovery of the possession of lands and premises described in the complaint as follows, to-wit:

NE $\frac{1}{4}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$, in the S $\frac{1}{2}$ of SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot 17

of Section 9, all in Township 20 North, Range 24 East, M. D. B. & M., containing 236.14 acres.

1. That in the year 1861, the said lands were settled upon and occupied by the grantors and predecessors in interest of defendant, Garaventa Land & Livestock Company, a corporation, and ever since said date have been and still are occupied by defendant, Garaventa Land & Livestock Company, and its predecessors in interest.

2. That immediately after occupancy, the predecessors of said defendant improved said lands for farming purposes, and buildings, fences, and improvements were constructed thereon; [62] that the Truckee River, a natural stream, is adjacent to the said lands and that artificial dams and ditches were constructed to appropriate and divert water into ditches, by the predecessors in interest of the defendant, Garaventa Land & Livestock Company, and the said lands were cleared and broken from their raw state and the same were planted to agricultural crops; that by means of the waters so diverted from said Truckee River through said artificial ditches crops were produced on said lands. That said crops were produced each and every year since about the year 1864; that at the time the said lands were settled upon, in the year 1861, the public surveys had not been extended to include said lands and the same were open and unsurveyed.

3. That at the time of the original settlement upon said lands by the predecessors of the defend-

ant, Garaventa Land & Livestock Company, the Piute Indians, for whom the plaintiff is now claiming rights on the Pyramid Lake Indian Reservation, were a warlike tribe and were at war with the Whites.

4. That on May 12, 1860, what is known as the General Ormsby Massacre took place wherein the Piute Indians massacred a number of White men on the Truckee River in the immediate vicinity of the lands described herein. Isaac Roop, Governor of Nevada Territory, addressed a letter to General Clarke, Department of Pacific, predicting war with the Piutes because of the murder of eight White men by the Piute Indians. In the year 1862, the territorial legislature of Nevada adopted a memorial to Congress relative to the depredations committed by Indians in the Territory of Nevada, asking the appointment of a commission to consider reimbursement of the settlers of Nevada and California for their expenses in protecting the settlements; [63] that said depredations so committed by the Indians were in the vicinity of the lands described in the complaint herein. The legislature of Nevada of 1865 passed a joint resolution asking for a Federal military force to protect the Overland Trail and mail route from Nevada to the Missouri River against hostile Indians. Contained in said resolution is the following:

“The Indian massacres which occurred in the summer and fall of 1864 will now be re-enacted.” (Stats. 1864-65, page 462.)

In the year 1866, the legislature of Nevada passed a joint memorial addressed to Major Halleck, commanding Department of Pacific, asking a suitable force of cavalry, etc., to repress the depredations of hostile Indians in Nevada, declaring there had been depredations "every year since the settlement of the territory." (Nev. Laws, 1866, page 267).

"That in May and June, 1861, the Overland Mail and immigrant routes were attacked by Indians and communications closed between the Atlantic states and Pacific coast." (Report to United States Senate on rebellion war claims of Nevada.)"

That there is no treaty between the Piute Indians and the United States respecting Pyramid Lake Indian Reservation.

5. That the United States Public Land surveys were extended to subdivide said lands in the year 1866; that in the year 1869 the United States issued patents to lands adjacent and contiguous to the lands described in the complaint, to-wit:

Lands in Sections 4, 8 and 9, Township 20 North, Range 24 East, M. D. B. & M., and also Sections 22 and 28 of Township 21 North, Range 24 East, M. D. B. & M., which are now embraced within the boundaries designated as the Pyramid Lake Indian Reservation.

The first improvements by the United States on Pyramid Lake Indian Reservation were begun many years after the defendant's predecessors had

settled upon the said lands referred to in the complaint. [64]

6. That the Town of Wadsworth, Washoe County, Nevada, is situated in part on Section 4 of Township 20 North, Range 24 East, M. D. B. & M., on lands to which the United States has issued patent; that from the year 1869, until the year 1904, the Southern Pacific Railroad Company maintained the railroad division point at said Towns of Wadsworth in said Section 4, on lands to which United States patents had been issued.

7. By Executive Order of March 23, 1874, the Pyramid Lake Indian Reservation was established; that at the date of the establishment of said reservation and ever since the year 1861, the lands referred to in the complaint herein have been occupied and improved by predecessors in interest of defendants and the Piute Indians never have had possession of the same.

That in the year 1865, the exterior boundaries of the Pyramid Lake Indian Reservation were established by survey, which survey included the lands referred to in the complaint. That on May 13, 1865, the Department of the Interior directed that the southerly boundary of the said reservation be moved to a point ten miles north of that previously fixed by said survey so as to place the lands referred to in the complaint and other lands settled upon by Whites outside the boundaries of the Pyramid Lake Indian Reservation. Subsequently, on August 17, 1865, said order was revoked. Neither the Piute

Indians nor the United States have been in the actual possession of any of the lands referred to in the complaint; that no effort was made to remove the defendant's predecessors in interest or the defendant from said lands prior to the year 1909. In the year 1916, actions for ejectment were instituted in the United States District Court of the District of Nevada against the defendant herein and other settlers. That the Department of the Interior [65] requested the Attorney General to postpone action on the pending suits against the said defendants until a further investigation could be made by the Department. That on June 7, 1924, the Congress of the United States passed an act entitled "An Act for the Relief of Settlers and Townsite Occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada, being Chapter 311, Public Laws of the United States of America (43 Stats. 596, Chap. 311); that pursuant to said act, defendant Garaventa Land & Livestock Company, a qualified applicant, made application to the Department of the Interior to purchase the lands described in the complaint, which application was approved; that the purchase price, fixed for said land under said act, was \$4,005.70 plus interest at the rate of four per cent (4%) per annum fully paid. That the said defendant paid on account of said purchase price in June, 1925, the sum of \$1,853.92 as the initial payment and continued to occupy and farm said lands as theretofore; that the said lands described in the complaint are intermingled with

patented lands owned in fee by the defendant, all of which form a single ranch unit and developed as a unit, and which was developed as a single ranch and irrigated through an individual ditch; that the dams, ditches and water rights used upon said lands are owned by the defendant, Garaventa Land & Livestock Company.

8. That the land involved in the complaint herein is situated at the extreme southerly border of the Inidan Reservation about twenty-five miles distant from Pyramid Lake and about twenty miles distant from the nearest portion of the reservation occupied by the Indians. That the Indians have restricted their occupation to the area known as the agency twenty miles to the north at or near Pyramid Lake. The defendant and other settlers who made application [66] to purchase the lands under said act of June 7, 1924, vigorously protested the prices of said lands fixed by the appraisers and a new inspection and appraisalment was made and the prices were reduced and the settlers authorized to make payment in four installments. The settlers were contending for a price not to exceed \$2.50 per acre for the raw land and continued to ask for relief; that the said defendant and other settlers upon said lands were encouraged to believe by acts and conduct of the Department of the Interior that they would be granted relief by the Department of the Interior or by Congress; that the defendant relied upon said acts and conduct in continuing to develop the land; that plaintiff waived a series of

defaults by defendant and others similarly situated and defendant reasonably believed that forfeiture would not be claimed; that negotiations were continuous with the Department of the Interior and through bills and resolutions introduced in Congress to obtain the relief the settlers desired up until the institution of this suit; that after the making of said contracts of purchase, extensions of time were granted to the said defendant within which to pay the balance of the installments based on said appraisal price, while negotiations were under way and Congressional action pending for a reduced appraisal value comparable with the price paid for similar lands by settlers on the public domain.

The Federal Reclamation Act of June 17, 1902, as revised and amended in 1924, 43 Stat. 702, T. 43 U. S. C. A. Sec. 371 et seq., made provision for Federal aid in the reclamation of arid lands. The first Project established under this law, July 2, 1902, is known as the Truckee-Carson or Newlands Project. Following its establishment, two suits were instituted in this court by the United States as Plaintiff to determine prior existing water rights on both the Truckee and Carson Rivers. The [67] Project was located near Fallon approximately thirty miles from the southerly end of Pyramid Lake Indian Reservation. In what is known as the Truckee River Suit, a temporary restraining order was entered February 13, 1926, making a preliminary determination of the then existing water appropriations theretofore made upon said River, des-

ignated Claim No. 1 etc. to No. 744. Claims Nos. 1 to 4, inclusive, relate to rights of the United States under the general designation "Government Rights," Claim No. 1, sub-headed: "Indian Ditch," deals with water rights "for the use and benefit of the Indians" on said Reservation to the extent of 3130 acres. Claim No. 2, subheaded "Indian Allotments," deals with water rights for such allotments when made. Claims Nos. 3 and 4 deal with the construction of a dam and canal and storage in Lake Tahoe for the Project in general. The said Restraining Order deals with the Defendant herein and defendants in other similar pending actions, occupying lands within said Reservation, in the same manner as other land owners and water claimants without the limits of the Reservation.

That the water rights for the lands described in the complaint are owned by and have been decreed to the defendant Garaventa Land & Livestock Company in the above suit, in which the plaintiff was a party.

9. That in the year 1930, the defendant was heavily indebted and because of the nationwide financial depression, beginning with the year 1930 and continuing for four or more years, the said defendant could not raise sufficient funds to complete said payments; that during all of said period, the defendant's lands and other assets were heavily mortgaged and because of the depreciated values of livestock and farm products, the defendant could not raise additional funds to make said payments;

that the said defendant carried on negotiations with the department for further extensions to enable it to obtain sufficient funds to pay said [68] balance. That on or about May 13, 1936, the Department of the Interior gave notice to the said defendant that its right to purchase said lands was cancelled; that during said period up to date of said notice of cancellation, the said defendant was actively carrying on negotiations to raise said balance of the purchase price and shortly after said notice was received, the negotiations to raise said purchase price were successful and the said defendant offered to pay the said balance of the purchase price, together with interest in full, and the same was tendered to the Register of the United States Land Office but said officers refused to accept said payment and still and now refuse to accept the same. That the said defendant has at all times kept the said tender and payment good and still and now offers to pay said purchase money with interest in full.

10. That the sale price fixed by the Secretary of the Interior under the said Act of June 7, 1924, is far in excess of the ordinary sales prices of similar land on the public domain; that the initial payment made by the defendant on said purchase was in excess of the total amount which would be required if based on prices fixed by Congress for settlers on the public domain. That areas of raw and undeveloped Government land adjacent to the lands described in the complaint have heretofore been disposed of by the Government at \$1.25 per acre to

settlers under homestead and other public land acts. The defendant has already paid \$7.85 an acre for said land.

A memorandum addressed to the Secretary of the Interior by the Commissioner of Indian Affairs of date December 19, 1929, and appearing in the printed report of hearings before the Committee on Indian Affairs, United States Senate in the year 1937 on Senate Bill 840, reads in part: [69]

“The white settlers have only such legal rights as were extended to them by the Act of June 7, 1924, but their equities are unquestioned, and in view of all the facts and circumstances of this case, not one of them may be charged with bad faith, and this without regard to whether the reservation be considered as established by the Commissioner’s letter of 1859, the departmental withdrawal of 1861, or the Executive Order of the President in 1874. The Indians were not in possession when the white settlements were made, the boundary lines of the reservation were not clearly established, the Government offered no opposition to the settlers, and their claims were bought and sold much in the manner of privately owned lands. The new purchasers took possession, and no objection appears to have been raised by the Government.”

Basis of recovery is alleged failure to comply with the provisions of the Act of Congress of June

7, 1924, entitled "An act for the relief of settlers and town-site occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada," 43 U. S. Stats. 596, Title 25, U. S. C. A., p. 344, and regulations promulgated thereunder. Section 1 of said Act provides:

"That the Secretary of the Interior is hereby authorized to sell to settlers or their transferees, under such terms, conditions, and price per acre as the said Secretary may prescribe, any lands * * * that have been settled upon, occupied, and improved by said settlers and their transferees in good faith for a period of twenty-one years or more immediately preceding the passage of this Act: * * * Provided further, That said sale shall be by private cash entry after it has been shown * * * that the lands applied for have been settled upon, occupied, and improved as required by this Act. * * * The proceeds of said sales shall be * * * for the Piute Indians of the said Pyramid Lake Indian Reservation."

Section 2 of said Act deals with sales of lands in the town of Wadsworth within said Reservation. Section 3 provides:

"That titles to lands * * * acquired by patents heretofore issued by the United States to any railroad company, individual, or the State of Nevada, or by certification of the State of Nevada, are hereby confirmed." [70]

Section 4 provides:

“All sales in accordance with section 1 of this act shall be made through the local land office within ninety days after the price of the lands shall have been fixed by the Secretary of the Interior: Provided, That where entry is not made within the time specified, the United States shall enter upon the premises and take possession thereof for the use and benefit of the Piute Indians of the Pyramid Lake Indian Reservation.”

The use of the words “terms” and “conditions,” clearly show that in order to effect an entry upon the occupied lands where, as in this case, the total price therefor is not required to be paid in full at one time but a part cash payment only is required and time or times allowed for subsequent cash payments with interest to accrue thereon, a prescribed cash payment on account of the total purchase price, made within the ninety days period, effects an entry within the clear meaning of the statute.

In this case, under the terms and conditions of the sale, an initial part payment only was required.

The partial payment in this case constituted entry within the meaning of the statute.

Subsequent default or defaults in deferred payments do not present a condition requiring the United States to enter upon the premises and take possession thereof. Such requirement exists only where entry is not made within the time specified.

It is not the policy of the United States to seek forfeiture under circumstances such as are here presented.

11. On March 10, 1936, the defendant received a letter from the Commissioner of the General Land Office, stating, among other things:

“A recomputation shows \$2,151.78 purchase money due and unpaid as of September 16, 1928, together with interest at 4% per annum from September 16, 1926, to date of payment which, if the principal is not paid until March 31, 1936, will amount to \$701.09.” [71]

CONCLUSIONS OF LAW.

1. That under the Act of June 7, 1924 (Title 25 U. S. C. A., page 344, Rev. U. S. Stats. 596), plaintiff is not entitled to cancel the contract of sale of said lands entered into with the defendant, Garaventa Land & Livestock Company, and that it would be inequitable and unjust to require or permit the cancellation of such contract of sale or to disturb the defendant's possession of said lands.

2. That the plaintiff is not required to issue patent to said lands, except upon receipt and acceptance of the money tendered by the defendants as the balance of the purchase price of said lands, together with interest thereon.

That the plaintiff is not entitled to deprive defendant of the occupancy of said lands.

3. That the plaintiff, United States of America, is not entitled to judgment for the relief prayed

for in said complaint and that the same should be dismissed.

Dated:, 1941.

.....
United States District Judge.

Service of the foregoing Findings of Fact and Conclusions of Law, by copy, is hereby admitted this 24th day of July, 1941.

/s/ JOHN S. HALLEY

Asst. U. S. Atty.

[Endorsed]: Lodged July 25, 1941. [72]

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW REQUESTED
BY PLAINTIFF.

Comes now the defendant, Garaventa Land & Livestock Company, a corporation, and hereby objects to the findings of fact requested by plaintiff upon the following grounds and moves that the same be rejected:

(a) That the plaintiff's requested findings are not in accordance with the evidence adduced on the trial of said cause; that said requested findings do not set forth the facts upon which the court relied in rendering his decision.

(b) That the said request for findings was not made within the time prescribed by law and that

the written opinion and decision of the court entered and filed on March 8, 1941, became and constitutes the findings and entry of judgment of the court under Rule 79A in that the same was entered in the Civil Docket on said date, to-wit, March 8, 1941, and constitutes the judgment herein; that no motion was made within the time fixed [73] by law or the rules of the court (52B) to amend its findings or make additional findings or to amend the judgment, nor was any motion made for a new trial pursuant to Rule 59, in which said request was made to amend said findings or make additional findings.

In the event the court determines not to have the opinion and decision stand as the findings, defendant proposes the findings accompanying these objections.

Dated: July 23, 1941.

WM. KEARNEY

Attorney for Defendant,
Garaventa Land and Live-
stock Company.

Service of the foregoing Objections, by copy, is hereby admitted this 24th day of July, 1941.

/s/ JOHN S. HALLEY

Asst. United States Attorney.

[Endorsed]: Filed July 25, 1941. [74]

At a Stated Term, to wit: The October Term 1940, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the thirty-first day of July in the year of our Lord one thousand nine hundred and forty-one.

Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge,
Presiding,

Honorable Francis A. Garrecht, Circuit Judge,
Honorable William Healy, Circuit Judge.

UNITED STATES OF AMERICA,

Appellant,

vs.

GARAVENTA LAND AND LIVESTOCK CO., a
Corporation, et al.,

Appellees.

ORDER REMANDING CAUSE TO DISTRICT
COURT, ETC.

Upon consideration of the petition of Honorable Frank H. Norcross, United States District Judge for the District of Nevada, for an order remanding this cause to said District Court for further proceedings, and good cause therefor appearing,

It Is Ordered that said petition be, and hereby is granted, and that this cause be, and hereby is re-

manded to the said District Court for the District of Nevada, and that said Honorable Frank H. Norcross, as Judge of said District Court be, and he hereby is authorized to settle, make and enter findings of fact and conclusions of law on or before the 25th day of August, 1941, and for such other and further orders as he, the said District Judge, may deem proper.

I Hereby Certify that the foregoing is a full, true and correct copy of an original Order made and entered in the within-entitled Cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 31st day of July, 1941.

[Seal]

PAUL P. O'BRIEN

Clerk, U. S. Circuit Court
of Appeals for the Ninth
Circuit

[Endorsed]: Filed Aug. 1st, 1941. [75]

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS OF FACT AND
CONCLUSIONS OF LAW PROPOSED BY
DEFENDANT.

Comes now the plaintiff in the above-entitled action and objects to the following numbered findings of fact proposed by the defendant, Garaventa Land & Livestock Company, and the conclusions of law

so proposed by said defendant, on the ground that said findings of fact are contrary to the evidence adduced on the trial of the above-entitled cause, and that said conclusions of law are contrary to law and to the evidence, and respectfully moves that the following findings be stricken;

(a) That part of finding No. 7, (Page 5), which states:

“* * * that the purchase price, fixed for said land under said act, was \$4,005.70 plus interest at the rate of four per cent (4%) per annum fully paid. That the said defendant paid on account of said purchase price in June, 1925, the sum of \$1,853.92 as the initial payment and continued to occupy and farm said lands as theretofore; * * *”

(b) That part of finding No. 8, (Pages 5 and 6), which states:

“The defendant and other settlers who made application to purchase the lands under said act of [76] June 7, 1924, vigorously protested the prices of said lands fixed by the appraisers and a new inspection and appraisal was made and the prices were reduced and the settlers authorized to make payment in four installments. The settlers were contending for a price not to exceed \$2.50 per acre for the raw land and continued to ask for relief; that the said defendant and other settlers upon said lands were encouraged to believe by acts and

conduct of the Department of the Interior that they would be granted relief by the Department of the Interior or by Congress; that the defendant relied upon said Acts and conduct in continuing to develop the land; that plaintiff waived a series of defaults by defendant and others similarly situated and defendant reasonably believed that forfeiture would not be claimed; that negotiations were continuous with the Department of the Interior and through bills and resolutions introduced in Congress to obtain the relief the settlers desired up until the institution of this suit; that after the making of said contracts of purchase, extensions of time were granted to the said defendant within which to pay the balance of the installments based on said appraisal price, while negotiations were under way and Congressional action pending for a reduced appraisal value comparable with the price paid for similar lands by settlers on the public domain.”

That in lieu of the above portion of findings Nos. 7 and 8, and hereinabove set-out, it is respectfully requested that the above-entitled Honorable Court make, and enter the following finding of fact:

“Twelve settlers filed applications to purchase pursuant to the provisions of the act of June 7, 1924 (43 Stat. 596) and seven ultimately fulfilled all requirements and received patents.

The particular facts relating to the defendant's application are as follows:

The Secretary of the Interior in 1925 approved a classification and appraisal of the lands fixing prices ranging from \$3 an acre for nonirrigable land to \$75 an acre for irrigable land. He rejected an earlier classification and appraisal by a Mr. Trowbridge fixing prices ranging from \$3 to \$5 an acre for nonirrigable land to \$20 to \$30 an acre for irrigable land. March 3, 1925, the Secretary approved regulations directing that the settlers be allowed 90 days to file applications and pay the full appraisal price. May 1, 1925, he modified the regulations to allow the settlers to pay either the full appraisal [77] price or one-fourth down and the balance in three equal annual instalments with interest on deferred payments at five per cent.

March 7, 1925, the defendant filed an application and made a quarter payment of \$1,853.92 on a full appraisal price of \$7,395.70. September 16, 1925, the General Land Office allowed the application. The defendant defaulted on the deferred payments, but, because of economic conditions and the pendency of proposed legislation to reduce the purchase price, the General Land Office refrained from cancelling its application. September 26, 1931, however, the General Land Office directed that the defendant be allowed 90 days from notice within

which to pay the full deferred balance and interest. December 29, 1931, before the 90-day period expired, the General Land Office revoked the previous notice and notified the defendant that it was allowed until January 31, 1932, to pay one-third of the outstanding balance, and interest, and that, in case of default and in the absence of an appeal to the Secretary of the Interior, its application would be cancelled, all moneys paid forfeited and the case closed without further notice. Thereafter the General Land Office suspended action on the defendant's application pending consideration of S. Res. 142 which required the Department of the Interior to withhold collections from the settlers until a Senate Committee could investigate the situation as to the appraisals in effect.

May 24, 1935, the General Land Office advised the defendant that the appraisals in effect had been cancelled and the earlier Trowbridge appraisals adopted; that the purchase price for the land it was seeking to purchase was accordingly reduced from \$7,395.70 to \$4,005.70, thus leaving due and unpaid \$2,151.78 after credit given for the \$1,853.92 previously paid; that it was allowed 30 days to make full payment of principal and interest or to pay the interest only; and that the application would be cancelled without further notice if such payment was not made or an appeal taken to the Secretary.

July 10, 1935, the defendant appealed to the Secretary for a further reduction of the appraisal price in the light of existing economic conditions. March 10, 1936, the General Land Office notified the defendant that the Secretary had ruled that all interest due on the unpaid principal was required to be paid within 30 days; that one-third of the principal due based on the 1934 re-appraisal was required to be paid within 6 months; and that, failing this, the application would be cancelled without further notice. The defendant failed to pay the interest as required and May 13, 1936, the Secretary cancelled its application."

Plaintiff further respectfully moves that the following portion of finding of fact No. 10, (Pages 9 and 10), [78] proposed by the defendant, Garaventa Land and Livestock Company, be stricken, upon the ground that the same is a conclusion of law and not a finding of fact:

"* * * Basis of recovery is alleged failure to comply with the provisions of the Act of Congress of June 7, 1924, entitled 'An act for the relief of settlers and town-site occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada,' 43 U. S. Stats. 596, Title 25, U. S. C. A., p. 344, and regulations promulgated thereunder. Section 1 of said Act provides:

'That the Secretary of the Interior is hereby authorized to sell to settlers or their trans-

ferees, under such terms, conditions, and price per acre as the said Secretary may prescribe, any lands * * * that have been settled upon, occupied, and improved by said settlers and their transferees in good faith for a period of twenty-one years or more immediately preceding the passage of this Act: * * * Provided further, That said sale shall be by private cash entry after it has been shown * * * that the lands applied for have been settled upon, occupied, and improved as required by this Act. * * * The proceeds of said sales shall be * * * for the Piute Indians of the said Pyramid Lake Indian Reservation.'

Section 2 of said Act deals with sales of lands in the town of Wadsworth within said Reservation.

Section 3 provides:

'That titles to lands * * * acquired by patents heretofore issued by the United States to any railroad company, individual, or the State of Nevada, or by certification of the State of Nevada, are hereby confirmed.'

Section 4 provides:

'All sales in accordance with section 1 of this act shall be made through the local land office within ninety days after the price of the lands shall have been fixed by the Secretary of the Interior: Provided, That where entry is not made within the time specified, the United States shall enter upon the premises and take

possession thereof for the use and benefit of the Piute Indians of the Pyramid Lake Indian Reservation.'

The use of the words 'terms' and 'conditions' clearly show that in order to effect an entry upon the occupied lands where, as in this case, the total price therefor is not required to be paid in full at one time but a part cash payment only is required and time or times allowed for subsequent [79] cash payments with interest to accrue thereon, a prescribed cash payment on account of the total purchase price, made within the ninety days period, effects an entry within the clear meaning of the statute.

In this case, under the terms and conditions of the sale, an initial part payment only was required.

The partial payment in this case constituted entry within the meaning of the statute.

Subsequent default or defaults in deferred payments do not present a condition requiring the United States to enter upon the premises and take possession thereof. Such requirement exists only where entry is not made within the time specified. It is not the policy of the United States to seek forfeiture under circumstances such as are here presented. * * *

The plaintiff does hereby object to defendant's, Garaventa Land and Livestock Company's, proposed conclusions of law, on the ground and for the

reason that the same are contrary to law and to the evidence adduced at the hearing of the above-entitled cause.

Plaintiff respectfully requests that the description of the lands set-out in defendant's proposed findings of fact and conclusions of law be corrected so as to read as follows:

“NE $\frac{1}{4}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Sec. 4 and Lot 17 of Section 9, all in Township 20 North, Range 24 East, M. D. B. & M., Washoe County, State and District of Nevada, containing 236.14 acres.”

Respectfully submitted,

MILES N. PIKE,

United States Attorney

By JOHN S. HALLEY

Ass't. U. S. Attorney [80]

Service by copy of the above and foregoing Objections to Findings of Fact and Conclusions of Law proposed by Defendant is hereby admitted this 5th day of August, 1941.

(Sgd.) WM. M. KEARNEY

(Sgd.) DOUGLAS A. BUSEY

Attorneys for Defendant.

[Endorsed]: Filed Aug. 6th, 1941. [81]

[Title of District Court and Cause.]

MOTION FOR ADDITIONAL FINDINGS

Comes Now the defendant and moves this Honorable Court for the following additional findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the portion of the purchase price, to-wit, the sum of \$1,853.92, paid by defendant to plaintiff is retained and kept by plaintiff. Plaintiff has not tendered said sum, or any part thereof, to defendant. Plaintiff has not offered in its complaint to refund said sum, or any part thereof. That defendants, and each of them, and the predecessors in interest of defendants, have acted entirely in good faith and without fraud or willful misconduct of any nature.

2. That on August 11, 1936, defendant, M. P. DePaoli, paid to the Register of United States Land Office at Carson City, the sum of \$5,116.62 as the last payment upon the purchase price [82] of the land sold to him by plaintiff. That said sum has been accepted and retained by plaintiff and has not been tendered to or returned to defendant.

CONCLUSIONS OF LAW

1. That defendants, and each of them, and the predecessors in interest of defendants, have acted in good faith and without fraud or willful misconduct of any nature.

2. That plaintiff has not tendered to defendant the portion of the purchase price, to-wit, the sum of \$1,853.92, paid by defendant to plaintiff and plaintiff is not entitled to a cancellation or rescission of the contract of sale of said lands.

Dated: August 7, 1941.

WM. KEARNEY

DOUGLAS A. BUSEY

[Endorsed]: Filed Aug. 8th, 1941. [83]

[Title of District Court and Cause.]

OBJECTIONS TO DEFENDANT'S MOTION
FOR ADDITIONAL FINDINGS FILED
AUGUST 8, 1941.

Comes Now the plaintiff in the above-entitled action and objects to defendant's motion for additional findings filed in the above-entitled Court and cause on August 8, 1941, and the conclusions of law therein proposed by said defendant, on the ground, and for the reason, that said findings of fact are contrary to the evidence adduced on the trial of the above-entitled cause, being *irrevelant*, redundant, and immaterial, and that said conclusions of law are contrary to law, and to such evidence, and respectfully moves that the following findings be stricken:

(a) That part of said additional finding No. 1 reading as follows:

“* * * That defendants, and each of them, and the predecessors in interest of defendants, [84] have acted entirely in good faith and without fraud or willful misconduct of any nature.”

(b) The whole of Paragraph No. 2 of such additional findings.

The plaintiff does hereby object to defendant's additional proposed conclusions of law on the ground, and for the reason that the same are contrary to law and to the evidence adduced on the trial of the above-entitled cause.

Respectfully submitted,

MILES N. PIKE,

United States Attorney

By JOHN S. HALLEY

Ass't. U. S. Attorney.

Service by copy of the above and foregoing Objections to Defendant's Motion for Additional Findings Filed August 8, 1941, is hereby admitted this 13th day of August, 1941.

WM. M. KEARNEY

DOUGLAS A. BUSEY

Attorneys for Defendant.

[Endorsed]: Filed Aug. 13th, 1941. [85]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

This action was filed by the United States in the above-entitled court on the 4th day of February, 1938, for the recovery of the possession of lands and premises described in the complaint as follows, to-wit:

NE $\frac{1}{4}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 4 and Lot 17 of Section 9, all in Township 20 North, Range 24 East, M. D. B. & M., containing 236.14 acres.

1. That in the year 1861, the said lands were settled upon and occupied by the grantors and predecessors in interest of defendant, Garaventa Land & Livestock Company, a corporation, and ever since said date have been and still are occupied by defendant, Garaventa Land & Livestock Company, and its predecessors in interest.

2. That immediately after occupancy, the predecessors of said defendant improved said lands for farming purposes, and buildings, fences, and improvements were constructed thereon; that the Truckee River, a natural stream, is adjacent to the said lands and that artificial dams and ditches were constructed [86] to appropriate and divert water into ditches, by the predecessors in interest of the defendant, Garaventa Land & Livestock Company,

and the said lands were cleared and broken from their raw state and the same were planted to agricultural crops; that by means of the waters so diverted from said Truckee River through said artificial ditches crops were produced on said lands. That said crops were produced each and every year since about the year 1864; that at the time the said lands were settled upon, in the year 1861, the public surveys had not been extended to include said lands and the same were open and unsurveyed.

3. That in the year 1859, what thereafter has been known as the Comstock Lode was discovered on Mount Davidson in Western Utah Territory. This great mining discovery caused a large movement of white settlers to return from California and over the Overland Route from the East to where the discovery was made, which soon was given the name, Virginia City, and the region in the vicinity thereof which would include Pyramid Lake and the course of the Truckee River. As had been the case in the Westward movement of white settlers generally, such settlement and movement of the whites was met with the opposition of the native Indians, particularly, that of the Pa-Ute Tribe. In the same year 1859, Peter Lassen and two companions from Honey Lake Valley while engaged in prospecting a short distance northerly from Pyramid Lake were killed by Indians. News of such killing spread through the white settlements and was the occasion of organizations to oppose the Indians. In the hope of effecting peace between the Pa-Utes

and whites the Indian Agent assigned to Utah Territory with headquarters at Salt Lake City, on November 25, 1859, at Washington, D. C., addressed a letter to the Commissioner of Indian Affairs suggesting that reservations be made for the Indians of lands comprising "the Northwest part of the Valley of the Truckee River including Pyramid Lake, and the Northeast part of the Valley of Walker River including the Lake of the same." In the year 1860, two engagements occurred [87] between organizations of whites and the Indians, generally referred to as the First and Second Battles of Pyramid Lake. In the said First Battle the Indians defeated the white organization of which eight were killed including the acting officer in command known as Major Ormsby. In the Second Battle, shortly following, the Indians were defeated. On March 3, 1861, the Act of Congress creating the Territory of Nevada, was approved and thereafter Honorable James W. Nye was appointed Governor and Superintendent of Indian Affairs for the Territory. April 16, 1863, at San Francisco, General Wright in command of army forces for the Pacific Coast, addressed a letter to the Governor of the Territory of Nevada stating: "The Indian disturbances along the line of the overland mail route, east of Carson City, threaten the entire suspension of our mail facilities, as well as preventing any portion of the vast emigration approaching from the east reaching Nevada. * * * My force immediately available on that line is small. In the meantime it

is of such importance to keep the mail and emigrant route east of you open, that I would earnestly recommend that one or two companies of cavalry be promptly organized and prepared for muster into the service of the United States. It is impossible for us at this moment to purchase horses and equipments. Each man would have to furnish his own. * * *." On December 22, 1863, a second call for additional *troups* was made. On October 15, 1864, a third call for additional troops was made on Governor Nye by Major-General Irwin McDowell, commanding the Department of the Pacific, who, at that time was at Virginia City. As a result of these several calls the Territory supplied a regiment of cavalry and a battallion of infantry a total of 1180 men, all of whom were in service within the Territories of Nevada, Utah and Idaho occasioned by the Indian situation.

4. The legislature of Nevada of 1865 passed a joint resolution asking for a Federal military force to protect the Overland Trail and mail route from Nevada to the Missouri River [88] against hostile Indians.

In the Year 1866, the legislature of Nevada passed a joint memorial address to Major Halleck, commanding Department of Pacific, asking a suitable force of cavalry, etc., to repress the depredations of hostile Indians in Nevada, declaring there had been depredations "every year since the settlement of the territory." (Nev. Laws, 1866, page 267.)

That there is no treaty between the Piute Indians and the United States respecting Pyramid Lake Indian Reservation.

5. That the United States Public Land surveys were extended to subdivide said lands in the year 1866; that in the year 1869 the United States issued patents to lands adjacent and contiguous to the lands described in the complaint, to-wit:

Lands in Sections 4, 8 and 9, Township 20 North, Range 24 East, M. D. B. & M., and also in Sections 22 and 28 of Township 21 North, Range 24 East, M. D. B. & M., which are now embraced within the boundaries designated as the Pyramid Lake Indian Reservation.

The first improvements by the United States on Pyramid Lake Indian Reservation were begun many years after the defendant's predecessors had settled upon the said lands referred to in the complaint.

6. That the Town of Wadsworth, Washoe County, Nevada, is situated in part on Section 4 of Township 20 North, Range 24 East, M. D. B. & M., on lands to which the United States has issued patents: that from the year 1869, until the year 1904, the Southern Pacific Railroad Company maintained the railroad division point at said Town of Wadsworth in said Section 4, on lands to which United States patents had been issued.

7. By executive Order of March 23, 1874, the Pyramid Lake Indian Reservation was established:

that at the date of the establishment of said reservation and ever since the year 1861, the lands referred to in the complaint herein have been occupied and improved by predecessors in interest of defendants and the Piute Indians never have had possession of the same. [89]

That in the year 1865, the exterior boundaries of the Pyramid Lake Indian Reservation were established by survey, which survey included the lands referred to in the complaint. That on May 13, 1865, the Department of the Interior directed that the southerly boundary of the said reservation be moved to a point ten miles north of that previously fixed by said survey so as to place the lands referred to in the complaint and other lands settled upon by Whites outside the boundaries of the Pyramid Lake Indian Reservation. Subsequently, on August 17, 1865, said order was revoked. Neither the Piute Indians nor the United States have been in the actual possession of any of the lands referred to in the complaint; that no effort was made to remove the defendant's predecessors in interest or the defendant from said lands prior to the year 1909. In the year 1916, actions for ejectment were instituted in the United States District Court of the District of Nevada against the defendant herein and other settlers. That the Department of the Interior requested the Attorney General to postpone action on the pending suits against the said defendants until a further investigation could be made by the Department. That on June 7, 1924, the Congress of

the United States passed an act entitled "An Act for the Relief of Settlers and Townsite Occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada, being Chapter 311, Public Laws of the United States of America (43 Stats. 596, Chap. 311); that pursuant to said act, defendant Garaventa Land & Livestock Company, a qualified applicant, made application to the Department of the Interior to purchase the lands described in the complaint, which application was approved; that the said lands described in the complaint are intermingled with patented lands owned in fee by the defendant, all of which form a single ranch unit and developed as a unit, and which was developed as a single ranch and irrigated through an individual ditch; that the dams, ditches and water rights used upon said lands are owned by the defendant, Garaventa Land & Livestock Company. [90]

8. That the land involved in the complaint herein is situated at the extreme southerly border of the Indian Reservation about twenty-five miles distant from Pyramid Lake and about twenty miles distant from the nearest portion of the reservation occupied by the Indians. That the Indians have restricted their occupation to the area known as the agency twenty miles to the north at or near Pyramid Lake.

9. Twelve settlers filed applications to purchase pursuant to the provisions of the act of June 7, 1924, (43 Stat. 596) and seven ultimately fulfilled all requirements and received patents.

The Secretary of the Interior in 1925 approved a classification and appraisal of the lands fixing prices ranging from \$3 an acre for nonirrigable land to \$75 an acre for irrigable land. He rejected an earlier classification and appraisal by a Mr. Trowbridge fixing prices ranging from \$3 to \$5 an acre for nonirrigable land to \$20 to \$30 an acre for irrigable land. March 3, 1925, the Secretary approved regulations directing that the settlers be allowed 90 days to file applications and pay the full appraisal price. May 1, 1925, he modified the regulations to allow the settlers to pay either the full appraisal price or one-fourth down and the balance in three equal annual instalments with interest on deferred payments at five per cent.

March 7, 1925, the defendant filed an application and made a quarter payment of \$1,853.92 on a full appraisal price of \$7,395.70. September 16, 1925, the General Land Office allowed the application. The defendant defaulted on the deferred payments, but, because of economic conditions and the pendency of proposed legislation to reduce the purchase price, the General Land Office refrained from cancelling its application. September 26, 1931, however, the General Land Office directed that the defendant be allowed 90 days from notice within which to pay the full deferred balance and interest. December 29, 1931, before the 90-day period expired, the General Land Office revoked the previous notice and [91] notified the defendant that it was allowed until

January 31, 1932, to pay one-third of the outstanding balance, and interest, and that, in case of default and in the absence of an appeal to the Secretary of the Interior, its application would be cancelled, all moneys paid forfeited and the case closed without further notice. Thereafter the General Land Office suspended action on the defendant's application pending consideration of S. Res. 142 which required the Department of the Interior to withhold collections from the settlers until a Senate Committee could investigate the situation as to the appraisals in effect.

May 24, 1935, the General Land Office advised the defendant that the appraisals in effect had been cancelled and the earlier Trowbridge appraisals adopted; that the purchase price for the land it was seeking to purchase was accordingly reduced from \$7,395.70 to \$4,005.70, thus leaving due and unpaid \$2,151.78 after credit given for the \$1,853.92 previously paid; that it was allowed 30 days to make full payment of principal and interest or to pay the interest only; and that the application would be cancelled without further notice if such payment was not made or an appeal taken to the Secretary.

The portion of the purchase price, to-wit, the sum of \$1,853.92, paid by defendant to plaintiff is retained and kept by plaintiff. Plaintiff has not tendered said sum, or any part thereof, to defendant. Plaintiff has not offered in its complaint to refund said sum, or any part thereof.

July 10, 1935, the defendant appealed to the Secretary for a further reduction of the appraisal price in the light of existing economic conditions. March 10, 1936, the General Land Office notified the defendant that the Secretary had ruled that all interest due on the unpaid principal was required to be paid within 30 days; that one-third of the principal due based on the 1934 re-appraisal was required to be paid within 6 months; and that, failing this, the application would be cancelled without further notice. The defendant failed to pay the interest as required and May 13, 1936, the Secretary ordered cancelled the application. [92]

10. The Federal Reclamation Act of June 17, 1902, as revised and amended in 1924, 43 Stat. 702, T. 43 U. S. C. A. Sec. 371 et seq., made provision for Federal aid in the reclamation of arid lands. The first Project established under this law, July 2, 1902, is known as the Truckee-Carson or Newlands Project. Following its establishment, two suits were instituted in this court by the United States as Plaintiff to determine prior existing water rights on both the Truckee and Carson Rivers. The Project was located near Fallon approximately thirty miles from the southerly end of Pyramid Lake Indian Reservation. In what is known as the Truckee River Suit, a temporary restraining order was entered February 13, 1926, making a preliminary determination of the then existing water appropriations theretofore made upon said River, designated Claim No. 1 etc. to No. 744. Claims Nos. 1

to 4, inclusive, relate to rights of the United States under the general designation "Government Rights," Claim No. 1, sub-headed: "Indian Ditch," deals with water rights "for the use and benefit of the Indians" on said Reservation to the extent of 3130 acres. Claim No. 2, subheaded "Indian Allotments," deals with water rights for such allotments when made. Claims Nos. 3 and 4 deal with the construction of a dam and canal and storage in Lake Tahoe for the Project in general. The said Restraining Order deals with the defendant herein and defendants in other similar pending actions, occupying lands within said Reservation, in the same manner as other land owners and water claimants without the limits of the Reservation.

That since the entry of said temporary restraining order, February 13, 1926, making preliminary determination of the then existing water appropriations theretofore made upon said river, the water has continuously been so distributed by a Water Master appointed by the Court, pending determination of rights resulting from additional storage on the headwaters of the Truckee River system within the State of California.

11. That in the year 1930, the defendant was heavily indebted and because of the nationwide financial depression, [93] beginning with the year 1930 and continuing for four or more years, the said defendant could not raise sufficient funds to complete said payments; that during all of said period, the defendant's lands and other assets were

heavily mortgaged and because of the depreciated values of livestock and farm products, the defendant could not raise additional funds to make said payments; that the said defendant carried on negotiations with the department for further extensions to enable it to obtain sufficient funds to pay said balance. That on or about May 13, 1936, the Department of the Interior gave notice to the said defendant that its right to purchase said lands was cancelled; that during said period up to date of said notice of cancellation, the said defendant was actively carrying on negotiations to raise said balance of the purchase price and shortly after said notice was received, the negotiations to raise said purchase price were successful and the said defendant offered to pay the said balance of the purchase price, together with interest in full, and the same was tendered to the Register of the United States Land Office but said officers refused to accept said payment and still and now refuse to accept the same. That the said defendant has at all times kept the said tender and payment good and still and now offers to pay said purchase money with interest in full.

12. That the sale price fixed by the Secretary of the Interior under the said Act of June 7, 1924, is far in excess of the ordinary sales prices of similar land on the public domain; that the initial payment made by the defendant on said purchase was in excess of the total amount which would be required if based on prices fixed by Congress for settlers on

the public domain. That areas of raw and undeveloped Government land adjacent to the lands described in the complaint have heretofore been disposed of by the Government at \$1.25 per acre to settlers under homestead and other public land acts. The defendant has already paid \$7.85 an acre for said land.

A memorandum addressed to the Secretary of the Interior by the Commissioner of Indian Affairs of date December 19, 1929, [94] and appearing in the printed report of hearings before the Committee on Indian Affairs, United States Senate in the year 1937 on Senate Bill 840, reads in part:

“The white settlers have only such legal rights as were extended to them by the Act of June 7, 1924, but their equities are unquestioned, and in view of all the facts and circumstances of this case, not one of them may be charged with bad faith, and this without regard to whether the reservation be considered as established by the Commissioner’s letter of 1859, the departmental withdrawal of 1861, or the Executive Order of the President in 1874. The Indians were not in possession when the white settlements were made, the boundary lines of the reservation were not clearly established, the Government offered no opposition to the settlers, and their claims were bought and sold much in the manner of privately owned lands. The new purchasers took possession, and no objection

appears to have been raised by the Government."

13. On March 10, 1936, the defendant received a letter from the Commissioner of the General Land Office, stating, among other things:

"A recomputation shows \$2,151.78 purchase money due and unpaid as of September 16, 1928, together with interest at 4% per annum from September 16, 1926, to date of payment which, if the principal is not paid until March 31, 1936, will amount to \$701.09."

CONCLUSIONS OF LAW.

1. The use of the words "terms" and "conditions," in Section 1 of the Act of Congress of June 7, 1924, 43 U. S. Stats. 596, T. 25, U. S. C. A., p. 344, clearly show that in order to effect an entry upon the occupied lands where, as in this case, the total price therefor is not required to be paid in full at one time but a part cash payment only is required and time or times allowed for subsequent cash payments with interest to accrue thereon, a prescribed cash payment on account of the total purchase price, made within the ninety days period, effects an entry within the clear meaning of the statute.

In this case, under the terms and conditions of the sale, an initial part payment only was required.

The partial payment in this case constituted entry within the meaning of the statute. [95]

Subsequent default or defaults in deferred payments do not of themselves present a condition requiring or authorizing the United States to enter upon the premises and take possession thereof. Such requirement exists only where entry is not made within the time specified. It is not the policy of the United States to seek forfeiture under circumstances such as are here presented.

2. That under the Sale Act of June 7, 1924, in view of said tender, plaintiff is not entitled to cancel the contract of sale of said lands entered into with the defendant, Garaventa Land & Livestock Company, and that it would be inequitable and unjust to require or permit the cancellation of such contract of sale or to disturb the defendant's possession of said lands.

3. That the plaintiff is not required to issue patent to said lands, except upon receipt and acceptance of the money tendered by the defendants as the balance of the purchase price of said lands, together with interest thereon.

That the plaintiff is not entitled to deprive defendant of the occupancy of said lands.

4. That the plaintiff, United States of America, is not entitled to judgment for the relief prayed for in said complaint and that the same should be dismissed.

Dated: August 22nd, 1941.

FRANK H. NORCROSS.

United States District Judge.

[Endorsed]: Filed Aug. 22nd, 1941. [96]

[Title of District Court and Cause.]

PLAINTIFF'S OBJECTIONS TO THE
COURT'S FINDINGS OF FACT AND CON-
CLUSIONS OF LAW.

Comes Now the plaintiff, United States of America, and hereby objects to the Court's findings of fact and conclusions of law made and filed in the above-entitled action on the 22nd day of August, 1941.

1 Objects to Paragraph No. 1 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

2. Objects to Paragraph No. 2 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

3. Objects to Paragraph No. 3 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

4. Objects to Paragraph No. 4 of said findings of fact [97] on the ground and for the reason that the same is irrelevant, immaterial and redundant.

5. Objects to Paragraph No. 5 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

6. Objects to Paragraph No. 6 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

7. Objects to Paragraph No. 7 of said findings of fact except that part of said finding reading as follows:

“By executive Order of March 23, 1874, the Pyramid Lake Indian Reservation was established;”

and except that part of Paragraph No. 7 of said findings of fact reading as follows: beginning on line one, page 5, with,—

“That in the year 1865,”

and ending with the words,—

“said order was revoked.”

and except that part of said findings of fact in Paragraph No. 7, beginning on line fourteen, page 5 thereof with the words,—

“In the year 1916,”

and ending with the words,—

“which application was approved;”.

8. Objects to Paragraph No. 8 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

9. Objects to Paragraph No. 10 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

10. Objects to Paragraph No. 11 of said findings of fact on the ground and for the reason that the same is irrelevant, [98] immaterial and redundant.

11. Objects to Paragraph No. 12 of said findings of fact on the ground and for the reason that the same is irrelevant, immaterial and redundant.

Plaintiff objects to the Court's conclusions of law, each, all and every paragraph thereof, on the

ground and for the reason that the same is contrary to the law, and to the evidence.

Dated: at Reno, Nevada, this 22nd day of August, 1941.

Respectfully submitted,

MILES N. PIKE,

United States Attorney,

By JOHN S. HALLEY,

Ass't. U. S. Attorney.

[Endorsed]: Filed Aug. 22, 1941. [99]

[Title of District Court and Cause.]

MINUTES OF COURT
of Friday, August 22, 1941.

At this time appears Miles N. Pike, Esq., U. S. Attorney, and John S. Halley, Esq., Assistant U. S. Attorney, attorneys for plaintiff; and D. A. Busey, Esq., of counsel for the defendants. The Court now files findings of fact and conclusions of law. Counsel for plaintiff file formal objections to the Court's findings of fact and conclusions of law. It is Ordered that plaintiff's objections to the Court's findings of fact and conclusions of law be, and the same hereby are, overruled. An exception to this ruling is granted counsel for the plaintiff. No objection to the Court's findings of fact and conclusions of law is made by Mr. Busey.

[100]

[Title of District Court and Cause.]

DESIGNATION OF THE CONTENTS
OF THE RECORD ON APPEAL

Now comes the United States of America, appellant in the above-entitled case, and designates for inclusion in the record on appeal the full and complete record and all proceedings and evidence in the action in this cause.

Respectfully submitted,
/s/ NORMAN M. LITTELL,
Assistant Attorney General.
/s/ MILES N. PIKE,
United States Attorney.

Service by copy of the above and foregoing is hereby admitted this 3rd day of September, 1941.

W. M. KEARNEY,
Attorney for Defendant.

[Endorsed]: Filed Sept. 4, 1941. [101]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Now comes the United States of America, appellant in the above-entitled case, and specifies the following statement of points to be relied upon on appeal:

1. The United States is entitled to recover the land within the Pyramid Lake Indian Reservation occupied by the defendant because title to the land

is in the United States and the defendant has acquired no rights under the Act of June 7, 1924, or the regulations issued pursuant thereto.

2. The Secretary of the Interior had authority to cancel the application of the defendant for its failure to complete the payments on the purchase price.

3. The defendant has no right to possession of the land in suit.

4. The court erred in entering judgment dismissing the complaint.

NORMAN M. LITTELL,

Assistant Attorney General.

/s/ MILES N. PIKE,

United States Attorney. [102]

Service by copy of the above and foregoing is hereby admitted this 3rd day of September, 1941.

W. M. KEARNEY,

Attorney for Defendant.

[Endorsed]: Filed Sept. 4, 1941. [103]

[Title of District Court and Cause.]

PLAINTIFF'S MOTION FOR TRANSMISSION
OF ORIGINAL EXHIBITS

Now comes the United States of America, plaintiff in the above-entitled action and states:

1. That there was introduced into evidence at the trial of this case an unusually large number

of exhibits consisting of many pages of typewritten and printed material, books, abstracts from books, and many maps;

2. That the plaintiff has taken an appeal from the judgment in this case and has designated for inclusion in the record on appeal the entire and complete record and all proceedings and evidence in the action;

3. That while it is necessary and desirable to have all the exhibits before the Circuit Court of Appeals, to require the Clerk of this Court to copy all of the exhibits introduced in this case would involve a tremendous burden on the Clerk and would serve no useful purpose; [104]

Wherefore the plaintiff moves this Court to order the Clerk to transmit to the Circuit Court of Appeals for the Ninth Circuit all of the original exhibits in this action.

Respectfully submitted,

/s/ NORMAN M. LITTELL,

Assistant Attorney General.

/s/ MILES N. PIKE,

United States Attorney.

[Endorsed]: Filed Sept. 4, 1941. [105]

[Title of District Court and Cause.]

ORDER AS TO ORIGINAL EXHIBITS

On motion of the United States of America, plaintiff in the above-entitled action, it is hereby ordered that the Clerk of this Court shall transmit to the Circuit Court of Appeals for the Ninth Circuit all of the original exhibits in this action, to be retained by the said Circuit Court of Appeals until disposition of the appeal in this action.

FRANK H. NORCROSS,

District Judge.

[Endorsed]: Filed Sept. 4, 1941. [106]

United States Circuit Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

GARAVENTA LAND AND LIVESTOCK CO.,
a Corporation, et al.,

Appellees.

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET CAUSE.

Upon consideration of the motion for enlargement of time to file transcript of record and docket cause, of the stipulation of counsel for appellee

thereto, and of the supporting affidavit of Miles N. Pike, United States Attorney, counsel for appellant, and good cause therefor appearing,

It is Ordered that the time to file transcript of record herein and docket the above cause in this court be, and hereby is extended to and including October 15, 1941.

CURTIS D. WILBUR,

Senior United States Circuit
Judge.

Dated: San Francisco, Calif, September 3, 1941.

[Endorsed]: Order, etc. Filed Sept. 3, 1941. Paul P. O'Brien, Clerk.

[Endorsed]: No. 2741. Filed Sept. 5th, 1941. O. E. Benham, Clerk U. S. Dist. Court, District of Nevada. [107]

[Title of District Court and Cause.]

ORDER AS TO ORIGINAL
TRANSCRIPT OF TESTIMONY.

On motion of the United States of America, plaintiff in the above-entitled action.

It is Hereby Ordered that the Clerk of this Court shall transmit to the Circuit Court of Appeals for the Ninth Circuit the original transcript of testimony taken at the proceedings had on the hearing of the above-entitled matter, to be retained by the said Circuit Court of Appeals for the Ninth

Circuit until disposition of the appeal in this action.

Dated this 16th day of September, 1941.

FRANK H. NORCROSS,

United States District Judge.

[Endorsed]: Filed Sept. 16, 1941. [108]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

U. S. DISTRICT COURT.

United States of America,

District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of United States of America, Plaintiff, -vs- Garaventa Land & Livestock Company, a corporation, et al., Defendants, said case being No. 2741 on the law docket of said Court.

I further certify that the attached transcript, consisting of 114 typewritten pages numbered from 1 to 114, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the "Designation of the Contents of the Record on Appeal"

filed in said case and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid. [109]

And I further certify that accompanying this record, in accordance with order of this Court filed and entered September 4, 1941, are all the original exhibits, both plaintiffs and defendants, filed in the aforesaid cause, with certain exceptions as hereinafter noted; said exhibits being listed as follows:

Plaintiff's Exhibits:

No. A—Photostat copy of letter dated March 3, 1925 from Commissioner of General Land Office to Register and Receiver, Carson City, Nevada.

No. B—Photostat copies of letters, etc.

No. C—Photostat copies of letters, etc.

No. D—Photostat copies of letters, etc.

No. E—Photostat copies of letters, etc.

No. F—Photostat copies of letters, etc.

No. G—Photostat copies of letters, etc.

No. H—Photostat copies of appeal and order on appeal filed with Dept. of Interior. (Garaventa Land and Livestock Co.)

No. I—Photostat copies of appeal and order on appeal. (J. A. Cerasola).

No. J—Photostat copies of appeal and order on appeal. (Domenico Cerasola).

No. K—Photostat copies of appeal and order on appeal. (M. P. Depaoli).

No. L—Photostat copies of appeal and order on appeal. (W. J. Cerasola).

No. M—Photostat copies of application of J. A. Cerasola to enter lands.

No. N—Photostat copies of application of Domenico Cerasola to enter lands.

No. O—Photostat copies of application of M. P. Depaoli to enter lands.

No. P—Photostat copies of application of Garaventa Land and Livestock Co. to purchase Land, etc.

No. Q—Photostat copies of application of W. J. Cerasola to enter lands. [110]

No. R—Photostat copies of letters, etc. and petition of M. P. Depaoli to reinstate application.

No. S—Copy of letter of May 13, 1936 to Register, Carson City, Nevada, from Commissioner of General Land Office in re Pyramid Lake entries.

No. T—Copies of several letters, etc. under one clip.

No. U—Copies of letters and return cards written by Alida C. Bowler.

No. V—Letter from Wm. Collier, Commissioner of Indian Affairs to Alida C. Bowler, dated May 20, 1936, and copy of letter from Commissioner of General Land Office to Register, Carson City, Nevada, dated May 13, 1936.

No. A-1, Photostat copy of Annual Report of the Commissioner of Indian Affairs for the year 1868, title page and pages 142 to 149, inclusive.

No. A-2, Photostat copies of letters and reports.

No. A-3, Photostat copies of letters.

No. A-4, Photostat copies of letters.

No. A-5, Photostat copies of letters.

No. A-6, Photostat copies of letters.

No. A-7, Photostat copies of letters.

No. A-8, Photostat copies of letters.

No. A-9, Photostat copies of letters.

No. A-10, Photostat copy of Map No. 944, Tube 926, Part of Pyramid Lake Reservation, Nevada.

No. A-11, Photostat copy of Map No. 915, Tube 45, covering area between Lake Tahoe and Pyramid Lake.

No. A-12, Photostat copy of Map No. 6788, Tube 780, covering Sections 5, 8, 9, 15, 16, 21, 22, 23, 27, 28, 32, 34 and 38 of Township 21 North, Range 24 East and Sections 3, 4, 5, 8, 9 and 10, Township 20 North, Range 24 East.

No. A-13, Photostat copy of Map No. 8528, Tube 1229, Pyramid Lake Indian Reservation, Nevada.

No. A-14, Photostat copy of Map No. 776 (No. 2), Tube 275, covering area in townships 20 to 29 North, inclusive, Mount Diablo Baseline, Ranges 20 to 25 East, Mount Diablo Meridian. [111]

No. A-15, History of Nevada by Davis, Volumes I and II.

No. A-16, Laws of Nevada Territory, 1862-1864, p. 196.

No. A-17, Statutes of Nevada for 1867, pages 183 and 184.

No. A-18, United States Statutes at Large, Vol. 45, part 2, Ch. 723, page 2378, Act of March 4,

1929 (This exhibit not sent for the reason that same is available in the appellate court.)

No. A-19, Volume 70, Part 2, Congressional Record, 70th Congress, Second Session, Senate Document No. 210, page 2278.

No. A-20, Photostat copy of Map of Utah Territory, etc., 1858.

No. A-21, Photostat copy of letter dated November 25, 1859, addressed to Hon. A. B. Greenwood, Commissioner of Indian Affairs from F. Dodge, Indian Agent of Nevada.

No. AA, Photostatic copy of the decision in the case of Central Pacific Railway Company reported in the 45th Volume, Land Decisions, pages 502, 503, 504, 505.

No. BB, Carbon copies of letters from the Commissioner of the General Land Office to the Surveyor General of California.

No. CC, Photostatic copy Report No. 175, dated January 4, 1859, by F. Dodge, Indian Agent.

No. DD, Photographic copy of Plat approved Sept. 25, 1865, T. 20 N., R. 24 E.

No. EE, Photographic copy of Plat approved Feb. 8, 1879.

No. FF, Photographic copy of Plat approved Jan. 19, 1888.

No. GG, Photographic copy of Plat approved Feb. 6, 1912.

No. HH, Photographic copy of Plat-B approved Dec. 31, 1913.

No. II, Photographic copy of Plat-A approved Dec. 31, 1913.

No. JJ, Photographic copy of Plat approved Nov. 1, 1935.

No. KK, Photographic copy of Plat approved Feb. 19, 1907, T. 21 N., R. 24 E.

No. LL, Photographic copy of Plat approved Feb. 25, 1908.

No. MM, Photographic copy of Plat approved Feb. 6, 1912.

No. NN, Photographic copy of Plat-B approved May 15, 1913.

No. OO, Photographic copy of Plat-A approved May 15, 1913. [112]

No. PP, Photographic copy of Plat approved Oct. 20, 1937.

No. QQ, Photographic copy of Map of Pyramid Lake Indian Reservation, Nev., surveyed in Jan. 1865.

No. RR, Photostatic copies of Senate Executive Documents, 36th Congress, 1st Sess. 1859-60, Vol. 1, No. 2, title page and pages 730 to 750 inclusive, of the report of the Secretary of the Interior.

No. SS, Photostatic copies of Senate Executive Documents, 36th Congress, 2nd Sess. 1860-61, Vol. 2, No. 1, title page and pages 68 to 106, inclusive, of the report of the Secretary of War.

No. TT, Photostatic copies Senate Executive Documents, 37th Congress, 2nd Sess. 1861-62, Vol. 1, No. 1, Pt. 1, title page and pages 616, 617, 618,

619 and 716 to 727 inclusive, of the report of the Secretary of Interior.

No. UU, Photostatic copies of the Report of the Commissioner of Indian Affairs for the year 1862, title page and pages 215 to 229, inclusive.

No. VV, Photostatic copies of Report of the Commissioner of Indian Affairs for the year 1863, title page and pages 390, 391, 392, 393, 416, 417, 418 and 419.

No. WW, Photostatic copies of Report of the Commissioner of Indian Affairs for the year 1864, title page and pages 138 to 151, inclusive.

No. XX, Photostatic copies of Report of the Commissioner of Indian Affairs for the year 1865, title page and pages 14 to 17, inclusive.

No. YY, Photostatic copies of the Report of the Commissioner of Indian Affairs for the year 1866, title page and pages 112 to 122, inclusive.

No. ZZ, Photostatic copies of Report on Indian Affairs by the Acting Commissioner for the year 1867, title page and pages 168 to 173, inclusive.

Defendants' Exhibits.

No. 1, Copy of letter to G. F. Allen, dated May 12, 1939.

No. 2, Registry Return Card.

No. 3, Printed pamphlet "Hearings before the Committee on Indian Affairs, etc." [113]

No. 4, Stipulation.

No. 5, Stipulation.

No. 6, Stipulation.

Nos. 7 to 19, inc. (Originals not sent. See "Offers of Additional Exhibits and Evidence", filed October 19, 1940, and made a part of the Transcript of Record on Appeal.)

Nos. I (a) to I (h) inclusive, Excerpts from the Report of the Commissioner of Indian Affairs for the year 1862 and the year 1866.

Plaintiff's Additional Exhibits

Photostatic copy of an Opinion of Assistant Attorney General George H. Shields, dated July 7, 1891. (This exhibit not numbered)

And I further certify that accompanying this record, and in accordance with order of this Court filed and entered September 16, 1941, is the original Transcript of Testimony filed in the aforesaid cause on June 30, 1939.

Witness my hand and the seal of said United States District Court this 13th day of October, 1941.

(Seal)

O. E. BENHAM,

Clerk, U. S. District Court.

[114]

[Title of District Court and Cause.]

TESTIMONY

Be It Remembered, That the above-entitled matters came on regularly for trial before the Court on Monday, the 19th day of June, 1939, at 10:00 o'clock A. M., Hon. F. H. Norcross, Judge, presiding.

Appearances

Wm. S. Boyle, Esq., U. S. District Attorney,
and

Thos. O. Craven, Esq., Asst. U. S. District
Attorney,
Attorneys for Plaintiff.

William M. Kearney, Esq.,
Attorney for Defendants Garaventa Land
& Livestock Company and Depaoli—Nos.
2741 and 2744.

Douglas A. Busey, Esq.,
Attorneys for Defendants Cerasola—Nos.
2742, 2743, and 2745.

The Court: We have five cases set for this morning.

Mr. Craven: Your Honor, we have set for trial what is [2*] commonly known as the Pyramid Lake land suits, and we move at this time that the five

*Page numbering appearing at bottom of page of original Reporter's Transcript.

suits be consolidated for the purpose of the trial. All of the suits involve identical issues.

Mr. Kearney: I have no objection, your Honor, to consolidating the cases insofar as the testimony of one relates to the other, but they involve different lands and there are some different issues.

The Court: They may be consolidated, subject to the right to introduce any additional evidence so far as any particular case is concerned. How will that do?

Mr. Kearney: Well, that amounts to the same thing. There are different issues in different cases and different lands, but insofar as the evidence in any one case is applicable to the other, I think it should be applied to all, but I do think on account of the fact there are different issues——

The Court: Oh yes, each case will have to be considered separately, with the exception that the evidence, so far as it applies to all cases, need not be repeated.

Mr. Busey: That is agreeable.

Mr. Craven: Your Honor, it has been stipulated between us that the court reporter's per diem shall be divided between the parties, the government bearing one-half and all the defendants one-half, to be apportioned between them as they see fit.

The Court: That will be the understanding.

Mr. Craven: I hand to your Honor a copy of the Act of June 7, 1924, upon which these actions are predicated. Your [3] Honor, these five actions,

Nos. 2741, 2742, 2743, 2744, and 2745, were commenced on February 2, 1939, to recover the possession of certain lands within the boundaries of the Pyramid Lake Indian Reservation, the complaint praying for all necessary writs for recovery of such possession. Various defendants were in possession of said lands and these actions were brought pursuant to the Act of Congress approved June 7, 1924, copy of which I have just handed to your Honor, the pertinent parts of which are as follows:

An Act for the Relief of Settlers and town-site occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to sell to the settlers or their transferees, under such terms, conditions, and price per acre as the said Secretary may prescribe, any lands in the Pyramid Lake Indian Reservation, in the State of Nevada, that have been settled upon, occupied, and improved by said settlers and their transferees in good faith for a period of twenty-one years or more immediately preceding the passage of this Act: Provided, That no more than six hundred and forty acres shall be sold to any one person or corporation: Provided further, That said sales shall be by private cash entry after it has been shown to the satisfaction of the Secretary of the Interior

that the lands applied for have been settled upon, occupied, and [4] improved as required by this Act, and in addition to such price per acre as may be fixed by the Secretary of the Interior all entrymen hereunder shall pay the same fees and commissions as provided by law where public lands are disposed of at \$1.25 per acre. The proceeds of said sales shall be deposited in the Treasury of the United States and be subject to appropriations by Congress for the Piute Indians of the said Pyramid Lake Indian Reservation.

That is Section 1 of the Act. Sections 2 and 3 are applicable to the townsite of Wadsworth and have no bearing upon the matter here. Section 4 provides:

“All sales in accordance with section 1 of this Act shall be made through the local land office within ninety days after the price of the land shall have been fixed by the Secretary of the Interior: Provided, That where entry is not made within the time specified, the United States shall enter upon the premises and take possession thereof for the use and benefit of the Piute Indians of the Pyramid Lake Indian Reservation.”

The complaint in each action alleges: (1) That the plaintiff at all times herein mentioned, and ever since the year 1848, has been, and now is, the legal owner, and is now entitled to the possession of the

following described lands and premises, situate, lying and being in the County of Washoe, State and District of Nevada; (2) That on or about May 8, 1925, pursuant to that certain Act of Congress of June 7, 1924, entitled "An Act for the relief of settlers and town-site occupants of certain lands in the Pyramid Lake Indian Reservation, Nevada," being Chap. 311, [5] Public *Laws* of the United States of America, passed by the Sixty-Eighth Congress, and the regulations promulgated thereunder by the Department of the Interior, on March 3, 1925, as amended, the defendant made application to the Department of Interior to enter upon and to purchase the hereinbefore described lands; and pursuant to said Act and Regulations, such application was allowed, and said defendant did enter upon said lands and was required to and did agree to pay plaintiff for said lands, as the purchase price thereof, a certain sum, plus interest accruing after June, 1925, at the rate of four per cent per annum on all unpaid principal, such interest to be paid on or before April 7, 1936; (3) That each of the defendants has failed, refused and neglected to pay said purchase price, or any part thereof, or interest, except a certain specified sum, which sum was paid on or about June, 1925, and defendant has paid no further sum on said purchase price since said date; (4) That on or about May 13, 1936—11 years after the last payment had been made—the entries of each of the defendants upon said lands, and their right to purchase the same

was cancelled by the Department of the Interior, pursuant to the terms of said Act of June 7, 1924, and said Regulations, for failure to pay the agreed purchase price within the time allowed by law; and on March 7, 1936 each of the defendants was served by United States registered mail with written notice of such cancellation; (5) That on or about June 2, 1936, written notice was served on each of the defendants by Alida C. Bowler, Superintendent of Carson Indian Agency, Bureau of Indian Affairs, Department of Interior, demanding that the defendant vacate and yield up to plaintiff said lands on or before September 30, 1936. [6] That notwithstanding said demand to vacate and said cancellation of entry, defendants are still in possession and occupancy of said lands and wrongfully and unlawfully refuse to vacate the lands and yield same to plaintiff; (6) that in each of the complaints the defendants named and those whose true names are unknown, claim title and right of possession to the said property wrongfully, unlawfully and adversely to plaintiff.

In case No. 2741, United States of America vs. Garaventa Land & Livestock Company, certain allegations of the complaint are denied, which the government will prove, as follows: (1) the defendant denies that the plaintiff is entitled to possession of the lands described, but the defendant admits the legal ownership of the plaintiff to said land; (2) the defendant denies that the defendant agreed to pay the plaintiff the sum of \$4,005.70 plus interest

accruing after June, 1925, at the rate of 4 per cent per annum; (3) the defendant alleges extensions were granted within which to complete payment of the purchase price and interest; (4) the defendant denies that cancellation of entry of defendant and right to purchase the land was made on or about May 13, 1936; (6) the defendant admits that during the month of March, 1926, it received a letter by United States registered mail, containing a written notice purporting to cancel a contract of purchase entered into between defendant and plaintiff; (7) defendant denies that on or about June 2, 1936, written notice was served on it by Alida C. Bowler, Superintendant of Carson Indian Agency, demanding that it vacate and yield up to plaintiff said lands on or before September 30, 1936, but admits it is still in possession and occupancy of the lands described in the com- [7] plaint; (8) the defendant alleges that the Secretary of the Interior is without authority to cancel the contracts and that the contracts of purchase are still in full force and effect and that defendant is entitled to continued occupancy of the land.

In case No. 2742, *United States vs. J. A. Cerasola*, certain allegations of the complaint are denied, which the government will prove, as follows: (1) defendant denies that plaintiff is entitled to possession of the lands described in the complaint; (2) defendant denies that pursuant to the regulations promulgated by the Department of the Interior on March 3, 1925, under Act of Congress of

June 7, 1924, the purchase price of said lands was the sum of \$5,350.45, or any other sum except as hereinafter alleged, or that interest at the rate of 4% per annum, or at any other rate, was to accrue thereon after June, 1925, or at any other time, or that such interest was to be paid on or before April 7, 1936, or at any other date. The defendant alleges, however, that the lands were re-appraised and on November 30, 1934, the purchase price of said lands was fixed by the Department of the Interior in the sum of \$5,350.45—which is the same principal that we have alleged—with interest thereon at the rate of 4% per annum, which we submit is virtually an admission of the allegation of the complaint; (3) defendant denies that defendant has failed or refused or neglected to pay said purchase price, or any part thereof, or interest. Defendant alleges that defendant tendered the balance of said purchase price, together with all interest thereon, to plaintiff, in or about the month of June, 1936, which is after the cancellation of the entry. (4) Defendant denies that on or about May 13, 1936, the entry of defendant upon said lands and his right to purchase [8] the same was cancelled by the Department of the Interior; (5) defendant denies that on or about June 2, 1936, written notice was served on defendant by Alida C. Bowler, Superintendent of Carson Indian Agency; (6) defendant denies that he is in possession of the lands wrongfully and unlawfully.

Case No. 2743, United States vs. W. J. Cerasola

and Marjorie Cerasola, his wife, First Doe, Second Doe, Third Doe and Fourth Doe, in which W. J. Cerasola and Marjorie Cerasola have filed an answer. All of the other defendants are in default and their default has been duly and regularly entered. In behalf of the defendants in the case of W. J. Cerasola and Marjorie Cerasola, certain allegations of the plaintiff were denied, which the plaintiff will prove as follows: (1) The defendants, W. J. Cerasola and Marjorie Cerasola deny that the plaintiff is entitled to possession of the lands described in the complaint; they allege that since May 8, 1925, they have been the owners of said property and by themselves and their predecessors in interest have been in actual possession thereof for more than 75 years prior to the filing of the complaint; (2) they deny that the purchase price of the lands was \$5,037.70; they allege that the lands were reappraised and on November 30, 1934, the purchase price was fixed by the Department of the Interior in the sum of \$5,037.70, with interest thereon at the rate of 4% per annum; which we submit is virtually an admission of the allegation, (3) they deny that they have failed or refused or neglected to pay said purchase price or interest; they allege they tendered the balance of said purchase price, together with interest thereon, to plaintiff in or about the month of June, 1936; (4) the defendants W. J. Cerasola and Marjorie Cerasola admit receiving written notice of cancella- [9] tion; (5) they deny that on or about June 2, 1936, writ-

ten notice was served on them by Alida C. Bowler, Superintendent of Carson Indian Agency, demanding that they vacate and yield up to plaintiff said lands on or before September 30, 1936. In that action, your Honor, I wish to call your Honor's attention in that case, No. 2743, is against one Domenico Cerasola, the entryman for the land in question; in that case W. J. Cerasola and Majorie Cerasola have appeared and filed an answer. They deny that notwithstanding said demand to vacate and said cancellation of entry, defendants are still in possession and occupancy of said lands and wrongfully and unlawfully refuse to vacate said lands and yield same to plaintiff. They allege that defendant Marjorie Cerasola claims title and right of possession of said property adversely to plaintiff. Am I correct in stating, Mr. Boyle, the defendant, W. J. Cerasola, claims an interest in this land?

Mr. Boyle: You are speaking of——

Mr. Craven: No. 2743, Domenico——

Mr. Boyle: No, only the heirs of Domenico Cerasola.

Mr. Craven: And W. J. Cerasola is not one of his heirs?

Mr. Boyle: Is his heir, yes.

Mr. Craven: Then he claims an interest in the land?

Mr. Boyle: W. J. Cerasola does claim the land.

Mr. Craven: Then as I have stated, they allege the affirmative defense of estoppel.

In case No. 2744, United States vs. M. P. Depaoli and Lena Depaoli, his wife, certain allegations of the complaint are denied, which plaintiff will prove, as follows: (1) he denies that the plaintiff at all times since the year 1848 or at any time subsequent to June, 1925, and is now entitled to possession of the lands in question; (2) defendant M. P. Depaoli, denies he has failed or refused and neglected to pay the purchase price of the land in question, except he admits he has paid the sum of \$2,514.82, on or about June, 1925, and he denies that he has not paid any further sum on said purchase price since that date. That case is distinguishable from the others in that particular, your Honor. He admits paying part of the purchase price in the sum of \$2,514.82, which sum was paid on or before June, 1925, but he denies that the defendant Depaoli has paid no further sum of said purchase price. He denies that on or about May 13, 1936, entry of defendant upon the lands in question and his right to purchase the same was cancelled by the Department of the Interior, pursuant to the terms of the Act of June 7, 1924, for failure to pay the agreed purchase price; (4) he admits that on March 10, 1926, he received a letter by registered mail, containing written notice purporting to cancel the contract of purchase entered into between defendant Depaoli and the plaintiff; (5) he denies that on or about June 2, 1936, written notice was served on defendant Depaoli by Alida C. Bowler, Superintendent of Carson Indian Agency, demanding that

he vacate and yield up to plaintiff the lands in question before September 30, 1936; he admits he is still in possession and occupancy of the lands and has refused to vacate them; (6) he alleges an affirmative defense of estoppel. He also alleges that the defendant has paid to the United States said purchase price, together with interest thereon at the rate of 4%, in the aggregate sum of \$7,631.44, and that he is entitled to continued possession and legal title by the issuance of a patent [11] to him to the land. I might state at this junction, your Honor, I think it would be proper, the evidence will show that this defendant applied for a reinstatement of his entry after the cancellation thereof, which was denied. The balance of the purchase price at the time the reinstatement was applied for was sent to the Registrar, Land Office at Carson City, and reinstatement was denied and the money ordered returned by the Commissioner of the General Land Office on September 30, 1936.

In case No. 2745, United States vs. W. J. Cerasola and others, the appearance and answer is made by the defendants, W. J. Cerasola, Marjorie Cerasola, and J. A. Cerasola, apparently as heirs of Domenico Cerasola and Lena Cerasola, the wife of Domenico Cerasola. Certain allegations of the complaint are denied, which the plaintiff will prove, as follows: (1) the defendants deny that plaintiff is entitled to possession of the lands in question; they allege that since May 8, 1925, defendants have been the owners of said property and by themselves and

their predecessors in interest have been in actual possession for more than 75 years prior to filing of the complaint and are still in possession thereof; (2) they deny that the purchase price of the lands in question was the sum of \$5,956.38, or any other sum, except as alleged hereinafter, or that interest at the rate of 4% per annum, or any other rate was to accrue thereon after June, 1925, or at any other time, or that such interest was to be paid on or before April 10, 1936. They allege that after a reappraisment the purchase price of the lands in question was fixed by the Department of the Interior at \$5,956.38, the same principal as we allege, with interest thereon at the rate of 4% per annum, which [12] is virtually an admission, we submit, of the allegation of the complaint. (3) They deny that the defendant has failed to pay said purchase price or interest. They admit that the sum of \$2,386.16 was paid in June, 1925 and that no further sum has been paid on the purchase price since that date. They allege that the defendant tendered the balance of the purchase price, together with interest thereon, to plaintiff in the month of June, 1936; (4) they deny that on or about May 13, 1936, entry of Domenico Cerasola upon the lands in question and his, or his successors right to purchase same was cancelled by the Department of the Interior; they deny that on March 10, 1936, or at any other time, defendant Domenico Cerasola was served by registered mail with written notice of such cancellation. Incidentally, your Honor, that is the only

suit in which the service upon the defendant, or one of the defendants, of the notice of cancellation, was denied. (5) They deny that on or about June 2, 1936, written notice was served on Domenico Cerasola by Alida C. Bowler, Superintendent of Carson Indian Agency, demanding that Domenico Cerasola vacate the lands in question on or before September 30, 1936; they deny that Domenico Cerasola continued in possession and occupancy of the lands in question and wrongfully and unlawfully refused to vacate said lands; (6) They admit that Domenico Cerasola died in Washoe County, Nevada. I think it is proper at this time to state that the records of the State Health Office show that Mr. Cerasola died on March 3, on March 3, 1930, at Sparks, Nevada, which was prior to the notice by registered mail and prior to the notice by Alida C. Bowler. (7) They deny that Lena Cerasola was the wife of Domenico Cerasola during the time of the entry to and including the time of cancellation; they admit that she [13] died in Washoe County, Nevada; (8) They admit that the heirs of Domenico Cerasola and his wife are necessary and proper parties defendant and they admit that said heirs claim title and right of possession to the property in question, adversely to plaintiff. They admit that W. J. Cerasola and Marjorie Cerasola, his wife, claim title and right of possession to the lands in question, adversely to plaintiff and they allege that since May 8, 1925 they have been the owners of said property and by themselves and their predecessors

in interest have been in actual possession thereof for more than 75 years prior to the filing of the complaint, and are still in possession thereof. (9) They deny that defendant, J. A. Cerasola, without right or title, is in possession and occupancy of the lands in question and wrongfully and unlawfully withholds the possession thereof from plaintiff, but they admit he is in possession of the lands. They allege an affirmative defense of estoppel.

I think I have fully stated the allegations of the complaint and the denials, but if counsel has anything they wish to add, I will be glad to yield at this time.

Mr. Kearney: I have nothing.

Mr. Busey: I have nothing.

Mr. Craven: We offer in evidence, as Plaintiff's Exhibit A the Regulations of the Secretary of the Interior, promulgated March 3, 1935, pursuant to the Act of June 7, 1924.

PLAINTIFF'S EXHIBIT A

"B"

NC

United States
Department of the Interior
General Land Office
Washington

June 10, 1939.

I hereby certify that the annexed copy of letter dated March 3, 1925, filed under Miscellaneous No.

1169548, is a true and literal exemplification of the record on file in this office in my custody.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

ANTOINETTE FUNK

Assistant Commissioner of the
General Land Office.

Address Only the Commissioner of the
General Land Office
Department of the Interior
General Land Office
Washington

March 3, 1925.

In Reply Please Refer to
1169548 "K" MMJ
Register and Receiver,
Carson City, Nevada.

Gentlemen:

Sec. 1, act of Congress approved June 7, 1924,
Public #233, provides:

"That the Secretary of the Interior is hereby authorized to sell to settlers or their transferees, under such terms, conditions, and price per acre as the said Secretary may prescribe, any lands in the Pyramid Lake Indian Reservation, in the State of Nevada, that have been

settled upon, occupied, and improved by said settlers and their transferees in good faith for a period of twenty-one years or more immediately preceding the passage of this Act; Provided, That no more than six hundred and forty acres shall be sold to any one person or corporation; Provided further, That said sales shall be by private cash entry after it has been shown to the satisfaction of the Secretary of the Interior that the lands applied for have been settled upon, occupied, and improved as required by this Act, and in addition to such price per acre as may be fixed by the Secretary of the Interior all entrymen hereunder shall pay the same fees and commissions as provided by law where public lands are disposed of at \$1.25 per acre. The proceeds of said sales shall be deposited in the Treasury of the United States and be subject to appropriations by Congress for the Piute Indians of the said Pyramid Lake Indian Reservation.”

Sec. 4 of the said act directs:

“All sales in accordance with section 1 of this Act shall be made through the local land office within ninety days after the price of the land shall have been fixed by the Secretary of the Interior: Provided, That where entry is not made within the time specified, the United States shall enter upon the premises and take possession thereof for the use and benefit of the Piute

Indians of the Pyramid Lake Indian Reservation.”

On February 7, 1925, the Assistant Secretary of the Interior approved the report of the examiners appointed to classify and appraise the lands, titles to which may be acquired under the said act, as modified by the Commissioner of Indian Affairs. The land has been classified as irrigated, improved irrigated and non-irrigable. The tracts in the different ranches and the prices at which they are to be sold are listed below.

Bonham Ranch claimed by Margaret Bonham Ross and her husband William Ross included lots 4, 5, 8, 9, 10 and 11, Sec. 12, T. 28 N., R. 19 E. Lot 5 has been eliminated, however, as it is needed to provide a passage for trailing sheep by stockmen leasing land on the reservation.

BONHAM RANCH

Township 28 North, Range 19 East, M. D. M.

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Irrig.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub
12	Lot 4	39.57	4.50	3.00	13.50	35.07	3.00	105.21				118.71
	Lot 8	39.54	1.00	3.00	3.00	38.54	3.00	115.62				118.62
	Lot 9	39.48	1.50	3.00	4.50	37.98	3.00	113.94				118.44
	Lot 10	39.38				39.38	3.00	118.14				118.14
	Lot 11	39.44				39.44	3.00	118.32				118.32
		197.41	7.00		21.00	190.41		571.23				592.20

Flannigan Ranch, also known as the "Hard-
scrabble Ranch," at present claimed by the Pyra-
mid Land & Stock Company, Robert C. Turrutin,
manager.

FLANNIGAN RANCH.

Township 24 North, Range 21 East, M. D. M.

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irrig.	Per Acre	Value	Value of Sub.
20	Lot 4	44.68	2.00	50.00	100.00	42.68	3.00	128.04	228.04
	Lot 5	38.79	5.00	50.00	250.00	33.79	3.00	101.37	351.37
	NE $\frac{1}{4}$	40.00	29.00	50.00	1450.00	11.00	3.00	33.00	1483.00
	NW $\frac{1}{4}$	40.00	8.00	50.00	400.00	32.00	3.00	96.00	496.00
	SW $\frac{1}{4}$	40.00	1.00	50.00	50.00	39.00	3.00	117.00	167.00
	SE $\frac{1}{4}$	40.00	2.00	50.00	100.00	38.00	3.00	114.00	214.00
21	NE $\frac{1}{4}$	40.00	8.00	50.00	400.00	32.00	3.00	96.00	496.00
	NW $\frac{1}{4}$	40.00	12.00	50.00	600.00	28.00	3.00	84.00	684.00
	NW $\frac{1}{4}$	40.00	5.00	50.00	250.00	35.00	3.00	105.00	355.00
	SE $\frac{1}{4}$	40.00	3.00	50.00	150.00	37.00	3.00	111.00	261.00
16	SE $\frac{1}{4}$	40.00	6.00	50.00	300.00	34.00	3.00	102.00	402.00
	SW $\frac{1}{4}$	40.00	5.00	50.00	250.00	35.00	3.00	105.00	355.00
	SW $\frac{1}{4}$	40.00	3.00	50.00	150.00	37.00	3.00	111.00	261.00
	SE $\frac{1}{4}$	40.00	4.00	50.00	200.00	36.00	3.00	108.00	308.00
		563.47	93.00		4650.00	470.47		1411.41	6061.41

The Mullen Ranch is claimed by John Poco of Reno, Nevada, by virtue of a sale by a referee in bankruptcy of the possessory interest of the Grizzly Livestock Company. The examination disclosed the following lands to contain indications of settlement, occupancy and improvement and their sale at the prices given was therefore recommended.

MULLEN RANCH

Township 23 North, Range 21 East, M. D. M.

Garaventa Land etc. Co.

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Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Irrig.	Per Acre	Value	Non-Irr.	Per Acre	Value	Value of Sub
1	NE $\frac{1}{4}$	40							40	3.00	120	120
	NW $\frac{1}{4}$	40							40	3.00	120	120
	SW $\frac{1}{4}$	40							40	3.00	120	120
	SE $\frac{1}{4}$	40							40	3.00	120	120
	NE $\frac{1}{4}$	40							40	3.00	120	120
	NW $\frac{1}{4}$	40							40	3.00	120	120
	SW $\frac{1}{4}$	40							40	3.00	120	120
	SE $\frac{1}{4}$	40							40	3.00	120	120
12	SE $\frac{1}{4}$	40	$\frac{1}{2}$	50	25.00	$\frac{1}{2}$	50	25.00	39	3.00	117	167
	NE $\frac{1}{4}$	40							40	3.00	120	120
	NW $\frac{1}{4}$	40							40	3.00	120	120
	SW $\frac{1}{4}$	40							40	3.00	120	120
	SE $\frac{1}{4}$	40							40	3.00	120	120
	NE $\frac{1}{4}$	40	3	50	150.00				37	3.00	111	261
	NW $\frac{1}{4}$	40							40	3.00	120	120
	SW $\frac{1}{4}$	40							40	3.00	120	120

Township 23 North, Range 22 East, M. D. M.

7	Lot 1											
	NW $\frac{1}{4}$	36.64	2	50	100.00	1	50	50.00	33.64	3.00	100.92	250.92
	Lot 2											
	SW $\frac{1}{4}$	36.73	5	50	250.00	2	50	100.00	29.73	3.00	89.19	439.19
		633.37	10.50		525.00	3.5		175.00	619.37	3.00	1858.11	2558.11

The Truckee River Ranches include "Garavanta", "Pierson," "Home," "Hoover," "Ceresola," "Sturla," "Hamilton," "Gardella," and "Hill" Ranches. The lands to be sold in each ranch and their classification and appraised value are listed below separately.

The Garavanta Ranch claimed by Garavanta Land & Livestock Company.

GARAVANTA RANCH.

Township 20 North, Range 24 East, M. D. M.

Sec. Sub.	Acres	Imp. Irr.	Per Acre	Value	Non. Irr.	Per Acre	Value	Value of Sub.
4 NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	28.50	60.00	1710.00	11.50	5.00	57.50	1767.50
NW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	2.10	60.00	126.00	37.90	5.00	89.50	315.50
SW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	34.50	60.00	2070.00	5.50	5.00	27.50	2097.50
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	35.90	60.00	2154.00	4.10	5.00	20.50	2174.50
S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$	20.00				20.00	5.00	100.00	100.00
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$	20.00	8.40	60.00	504.00	11.60	5.00	58.00	562.00
8 NE $\frac{1}{4}$ NE $\frac{1}{4}$	40.00				40.00	5.00	200.00	200.00
Lot 11 SE $\frac{1}{4}$ NE $\frac{1}{4}$	44.52	.90	60.00	54.00	43.62	5.00	218.10	272.10
Lot 17 NW $\frac{1}{4}$ SW $\frac{1}{4}$	36.14	3.60	60.00	216.00	32.54	5.00	162.70	378.70
	320.66	113.90		6834.00	206.76		1033.80	7867.80

The Home Ranch claimed by William Caravanta. The S $\frac{1}{2}$ lot 15, Sec. 34 has been eliminated from the ranch for the reason that the inspector reported Indian and white cemeteries located on this subdivision.

HOME RANCH

Township 21 North, Range 24 East, M. D. M.

Garaventa Land etc. Co.

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Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub.
34	Lot 5								
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	41.95	12.00	50.00	600.00	29.95	5.00	149.75	749.75
	Lot 6								
	NW $\frac{1}{4}$ NW $\frac{1}{4}$	41.35		50.00		41.35	5.00	206.75	206.75
	Lot 7								
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	41.06		50.00		41.06	5.00	205.30	205.30
	Lot 8								
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	41.04	10.50	50.00	525.00	30.54	5.00	152.70	677.70
E $\frac{1}{4}$	Lot 13								
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.73	21.10	50.00	1055.00	19.63	5.00	98.15	1153.15
	Lot 14								
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	40.62	6.50	50.00	325.00	34.12	5.00	170.60	495.60
	Lot 15, N $\frac{1}{2}$								
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	20.14		50.00		20.14	5.00	100.70	100.70
	Lot 16								
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	40.40	16.60	50.00	830.00	23.80	5.00	119.00	949.00
		307.29	66.70		3335.00	240.59		1202.95	4537.95

The Hoover Ranch claimed by William Ceresola.

HOOVER RANCH.

Township 21 North, Range 24 East, M. D. M.

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub.
33	Lot 8								
	SE $\frac{1}{4}$	40.11	1.60	55.00	88.00	38.51	5.00	192.55	280.55
	Lot 7								
	SW $\frac{1}{4}$	40.48	2.20	55.00	121.00	38.28	5.00	191.40	312.40
	Lot 9								
	NE $\frac{1}{4}$	39.93	24.80	55.00	1364.00	15.13	5.00	75.65	1439.65
	Lot 10								
	NW $\frac{1}{4}$	40.23	12.60	55.00	693.00	27.63	5.00	138.15	831.15
		160.75	41.20		2266.00	119.55		597.75	2863.75

The Ceresola Ranch claimed by Domenico Ceresola.

CERESOLA RANCH.

Township 21 North, Range 24 East, M. D. M.

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub.
22	Lot 12 SE $\frac{1}{4}$ SW $\frac{1}{4}$	41.88	20.10	55.00	1105.50	21.78	5.00	108.90	1214.40
	Lot 11 SW $\frac{1}{4}$ SW $\frac{1}{4}$	41.59	3.30	55.00	181.50	38.29	5.00	191.45	372.95
	Lot 3—W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$	20.87	4.20	55.00	231.00	16.67	5.00	83.35	314.35
27	Lot 6—W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$	20.335	7.60	55.00	418.00	12.735	5.00	63.67	481.67
	Lot 5 SW $\frac{1}{4}$ NW $\frac{1}{4}$	41.59	40.00	55.00	2200.00	1.59	5.00	7.95	2207.95
	Lot 12—W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$	20.75	20.75	55.00	1136.25		5.00		1136.25

Sec. Sub.	Acres	Imp. Irr.	Per Acre	Value	Non. Irr.	Per Acre	Value	Value of Sub.
Lot 13—W ¹ / ₂ SW ¹ / ₄ SW ¹ / ₄	20.73	9.10	55.00	505.50	11.63	5.00	58.16	563.66
28 Lot 1 NE ¹ / ₄ NE ¹ / ₄	39.59	.40	55.00	22.00	39.19	5.00	195.95	217.95
Lot 7 SW ¹ / ₄ NE ¹ / ₄	39.78		55.00		39.78	5.00	198.90	198.90
Lot 8 NW ¹ / ₄ SE ¹ / ₄	39.43	4.30	55.00	236.50	35.13	5.00	175.65	412.15
Lot 13 SW ¹ / ₄ SE ¹ / ₄	39.47	4.20	55.00	231.00	35.27	5.00	176.35	407.35
27 Lot 4 NW ¹ / ₄ NW ¹ / ₄	41.56	17.50	55.00	962.50	24.06	5.00	120.30	1082.80
33 Lot 1 NE ¹ / ₄ NE ¹ / ₄	40.05	3.00	55.00	165.00	37.05	5.00	185.25	330.25
Lot 2 NW ¹ / ₄ NE ¹ / ₄	40.40	6.20	55.00	341.00	34.20	5.00	171.00	512.00
	488.025	140.65		7735.75	347.375		1736.88	9472.63

The Sturla Ranch claimed by M. P. Depaoli.

STURLA RANCH.

Township 21 North, Range 24 East, M. D. M.

Garaventa Land etc. Co.

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Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub.
22	Lot 7								
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	41.18	0.70	55.00	38.50	40.48	5.00	202.40	240.90
27	Lot 1								
	NE $\frac{1}{4}$ NE $\frac{1}{4}$	41.88	9.50	55.00	522.50	32.38	5.00	161.90	684.40
	Lot 2								
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	41.73	33.70	55.00	1853.50	8.03	5.00	40.15	1893.65
	Lot 7								
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	41.68	25.20	55.00	1386.00	16.48	5.00	82.40	1468.40
	Lot 10								
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	41.46	13.70	55.00	753.50	27.76	5.00	138.80	892.30
	Lot 11								
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	41.54	17.10	55.00	940.50	24.44	5.00	122.20	1062.70

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irrig.	Per Acre	Value	Value of Sub.
Lot 14									
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	41.50	11.10	55.00	610.50	30.40	5.00	152.00	762.50
Lot 3—E $\frac{1}{2}$									
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	20.82	14.40	55.00	792.00	6.42	5.00	32.10	824.10
Lot 6—E $\frac{1}{2}$									
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	20.885	18.40	55.00	1012.00	2.485	5.00	12.42	1024.42
Lot 12—E $\frac{1}{2}$									
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	20.75	3.55	55.00	195.25	17.20	5.00	86.00	281.25
Lot 13—E $\frac{1}{2}$									
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	20.73		55.00		20.73	5.00	103.65	103.65
Lot 8									
22	SE $\frac{1}{4}$ NE $\frac{1}{4}$	41.20	12.30	55.00	676.50	28.90	5.00	144.50	821.00
		415.355	159.65		8780.75	255.705		1278.52	10059.27

The Hamilton Ranch claimed by Julius A. Ceresola.

HAMILTON RANCH.

Township 21 North, Range 24 East, M. D. M.

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub.
15	Lot 6								
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	41.44	17.50	50.00	875.00	23.94	5.00	119.70	994.70
	Lot 11								
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	41.78	7.60	50.00	380.00	34.18	5.00	170.90	550.90
	Lot 10								
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	41.54	5.30	50.00	265.00	36.24	5.00	181.20	446.20
	Lot 15								
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	41.79	1.00	50.00	50.00	40.79	5.00	203.95	253.95
	Lot 7								
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	41.90	1.00	50.00	50.00	40.90	5.00	204.50	254.50
		208.45	32.40		1620.00	176.05		880.25	2500.25

The Gardella Ranch claimed by Guiseppe Gardella.

GARDELLA RANCH.

Township 21 North, Range 24 East, M. D. M.

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub.
Lot 12									
15	NW $\frac{1}{4}$ SW $\frac{1}{4}$	42.06	10.1	50.00	505.00	31.96	5.00	159.80	664.80
Lot 5—S $\frac{1}{2}$									
S $\frac{1}{2}$	SW $\frac{1}{4}$ NW $\frac{1}{4}$	20.87	2.5	50.00	130.00	18.27	5.00	91.35	221.35
Lot 5									
16	SW $\frac{1}{4}$ NE $\frac{1}{4}$	41.31	1.4	50.00	70.00	39.91	5.00	199.55	269.55
Lot 1									
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	41.83	1.8	50.00	90.00	40.03	5.00	200.15	290.15
Lot 14—S $\frac{1}{2}$									
9	S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$	21.75	5.8	50.00	290.00	15.95	5.00	79.75	369.75
		167.82	21.70		1085.00	146.12		730.60	1815.60

The Hill Ranch claimed by Julius A. Ceresola.

HILL RANCH.

Township 21 North, Range 24 East, M. D. M.

Garaventa Land etc. Co.

153

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non- Irr.	Per Acre	Value	Value of Sub.
Lot 1									
8	NE $\frac{1}{4}$	43.02	1.30	55.00	71.50	41.72	5.00	208.60	280.10
Lot 8									
	SE $\frac{1}{4}$	41.80	29.00	55.00	1595.00	12.80	5.00	64.00	1659.00
Lot 9									
	NE $\frac{1}{4}$	40.49	9.70	55.00	533.50	30.79	5.00	153.95	687.45
Lot 4									
9	NW $\frac{1}{4}$	43.18		55.00		43.18	5.00	215.90	215.90
Lot 5									
	SW $\frac{1}{4}$	43.25	4.40	55.00	242.00	38.85	5.00	194.25	436.25
Lot 12									
	NW $\frac{1}{4}$	43.35	18.50	55.00	1017.50	24.85	3.00	124.25	1141.75
Lot 13—N $\frac{1}{2}$									
N $\frac{1}{2}$	SW $\frac{1}{4}$	21.30	12.40	55.00	682.00	8.90	5.00	44.50	726.50
Lot 14—N $\frac{1}{2}$									
N $\frac{1}{2}$	SE $\frac{1}{4}$	21.75	5.00	55.00	275.00	16.75	5.00	83.75	358.75

208 14 80 20 4416 50 917 84 1089 20 5505 70

The examiners in their report did not give the present claimant of the Pierson Ranch.

PIERSON RANCH

Township 20 North, Range 24 East, M. D. M.

Sec.	Sub.	Acres	Imp. Irr.	Per Acre	Value	Non Irr.	Per Acre	Value	Value of Sub.
9	Lot 12—N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$	19.215	2.00	50.00	100.00	17.215	50.00	86.07	186.07

The lands will be sold subject to any right of way thereover previously granted.

The present claimants of the lands herein listed will be allowed 90 days from February 7, 1925, the date of the approval of the classification and appraisal, within which to pay the appraised price of the land at your office, together with the same fees and commissions as provided by law where public lands are disposed of at \$1.25 per acre. Prior to the allowance of an application for any tract, the applicant must file in your office his affidavit corroborated by the affidavits of two persons showing that the land which he seeks to purchase has been settled upon, occupied and improved by said settler or his transferor in good faith for a period of twenty-one years or more immediately preceding June 7, 1924. Immediately upon the receipt of an application to purchase, together with the required affidavit and the amount of the appraised price of the lands applied for, you will transmit the application and affidavit to this office and will hold the money in your unearned account until action is taken on the application.

You will advise the settlers on the lands listed of their rights under said act of June 7, 1924, and that if entry is not made within the time specified, the United States Government will take possession of the land for the use and benefit of the Piute Indians of the Pyramid Lake Indian Reservation and all claims which they may have had thereto by rea-

son of settlement, occupancy and improvements thereon will be forfeited.

All moneys received from the sales herein authorized will be deposited in the Treasury of the United States and be subject to appropriation by Congress for the Piute Indians of the Pyramid Lake Indian Reservation.

Very respectfully,

WILLIAM [Illegible]

Commissioner.

Approved: March 3, 1925. (Signed) E. C. FINNEY, First Assistant Secretary.

2-21 hmk

[Endorsed]: No. 2741-2745, U. S. Dist. Court, District of Nevada. Plffs. Exhibit No. "A" for admission. Filed June 19, 1939. O. E. Benham, Clerk. By, Deputy.

Mr. Kearney: Of course, your Honor, please, may we reserve our right to object to this? The rules and regulations were never published, so far as I know, and not available to anybody except private individuals. We were unable to get any of them and [14] I doubt if it would be admissible because of its lack of publicity—a legal publication, and we do not know what is in it yet.

The Court: Let me make this suggestion. All documents that are governmental might go in, subject to any legal objection. It may be considered at the time of argument.

Mr. Kearney: Some may be admissible and others not, because we don't know—we haven't seen it yet. Some are not in accordance with the statute, some require publication, some do not.

Mr. Craven: I intended to make our offers for the purpose of the record and let counsel for defendants peruse them during recess. Anything that is convenient to your Honor.

The Court: That is satisfactory. Simply an offer made at this time.

Mr. Craven: We offer in evidence, as plaintiff's Exhibit B, in case No. 2741, United States against Garaventa Land & Livestock Company, photostatic certified copies of notice dated February 27, 1936, demanding payment of the purchase price and other notices prior thereto, demanding payment of purchase price, and evidence of service thereon upon the defendant.

PLAINTIFF'S EXHIBIT B

“B”

NC

United States
Department of the Interior
General Land Office
Washington

June 10, 1939.

I Hereby Certify that the annexed copies of papers and letters, filed under Carson City 015163, are true and literal exemplifications from the records on file in this office in my custody.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

ANTOINETTE FUNK,

Assistant Commissioner of the
General Land Office.

United States
Department of the Interior
General Land Office
Carson City, Nevada,
(Place)

April 14, 1936.
(Date)

Serial 015163

Replying to letter "K", dated February 27, 1936
Claimant: Garaventa Land & Livestock Co.,

PROOF OF SERVICE TRANSMITTED

The Commissioner of the General Land Office.

Sir:

Transmitted herewith is proof of service of the above-mentioned letter. The time allowed thereunder has expired.

Report is made that the party in interest has not made response thereto.

(If additional evidence, appeal or showing made,

so state and transmit papers; if registered letter returned unclaimed, transmit same herewith)
Registry return card herewith.

Very respectfully,

GLADYS E. HUYCK,

Register.

(Title)

[Receipt for Registered Article No. 4990 attached—addressed to U. S. Land Office—signed “Garaventa Land & Livestock Co., by T. J. Garaventa.”]

United States
Department of the Interior
General Land Office
Washington

Feb. 27, 1936.

In Reply Please Refer to
Carson City 015163 “K” JEW
Garaventa Land & Livestock Company,
Pyramid Lake Indian Reservation.

Payment required.

Register,
Carson City, Nevada.

Sir:

On July 15, 1935, claimant, Garaventa Land & Livestock Company, by their attorney, William M. Kearney, filed an appeal with the Secretary of the Interior, from office decision of April 12, 1935,

whereby it was held that claimant would be allowed 30 days within which to make payment in full of the unpaid purchase money, together with interest at four percent from September 16, 1925, the date of allowance of the entry, to December 31, 1934, or to make payment of the interest only. They were advised if they paid the interest, their entry would not be canceled for non-payment of principal, without giving them further opportunity to make the payment.

On November 25, 1935, the Secretary of the Interior modified said office decision in the following particulars:

(1) All interest due must be paid within 30 days from the date of service hereof;

(2) One-third of the unpaid principal now outstanding must be paid within six months from the date hereof;

(3) The unpaid principal will be computed on the basis of the 1934 reappraisal; and

(4) Interest will be computed by the General Land Office from the date of default.

A recomputation shows \$2,151.78 purchase money due and unpaid as of September 16, 1928, together with interest at four per cent from September 16, 1926, to date of payment which, if the principal is not paid until March 31, 1936, will amount to \$701.09.

You will allow claimant 30 days from the date of service hereof, within which to make payment of

\$701.09 interest due as of March 31, 1936, failing in which, the said entry, hereby held for cancellation, will be canceled and the case closed without further notice from this office.

In due time report, transmitting evidence of service of notice.

Very respectfully,
FRED W. JOHNSON,
Commissioner.

2-26-vgm

United States
Department of the Interior
General Land Office
Carson City, Nevada,
(Place)

July 16, 1935.
(Date)

Serial 015163

Replying to letter "K", dated
April 12, 1935

Claimant: Garaventa Land & Livestock Co.

PROOF OF SERVICE TRANSMITTED

The Commissioner of the General Land Office.

Sir:

Transmitted herewith is proof of service of the above-mentioned letter. The time allowed thereunder has expired.

Report is made that the party in interest has not made response thereto.

(If additional evidence, appeal or showing made, so state and transmit papers; if registered letter returned unclaimed, transmit same herewith)

Registry return card herewith.

Very respectfully,

ELIZABETH M. RYAN

Acting Register.

(Title)

[Receipt for Registered Article No. 3113 attached—Addressed to United States Land Office—signed “Frank L. Garaventa.”]

United States
Department of the Interior
General Land Office
Washington

Apr. 12, 1935.

In Reply Please Refer to
Carson City 015163 “K” LWB

Pyramid Lake Indian Reservation.

Purchase money due and unpaid, \$2151.78.

Interest due and unpaid to December 31, 1934,
\$799.73.

Register,

Carson City, Nevada.

Madam:

Under date of November 30, 1934, the Department concurred in a recommendation by this office

that the amount due under cash entry Carson City 015163 of Garaventa Land and Livestock Company for land in Pyramid Lake Indian Reservation be figured on the basis of the Trowbridge appraisal of \$4005.70 and that interest on the amount due be computed at the rate of 4% to December 31, 1934. The records of this office show \$1853.92 to have been paid on account of the principal and no interest to have been paid.

The said entry was made under the act of June 7, 1924 (43 Stat. 596) which authorizes the sale of the lands, "under such terms, conditions, and price per acre", as the Secretary of the Interior may prescribe.

Accordingly you will allow the Garaventa Land and Livestock Company 30 days from receipt of notice hereof within which to make payment in full of the unpaid purchase money, together with interest at 4% from September 16, 1925, the date of allowance of the entry, to December 31, 1934, or to make payment of the interest only. The interest required to December 31, 1934 is shown in the caption hereof.

If the interest only is paid, action looking to the cancellation of the entry because of nonpayment of the principal will not be taken without further notice to the claimant, giving him an opportunity to make the payment.

You will advise entryman that unless he makes payment of the unpaid purchase money and interest or makes payment of the interest only to De-

cember 31, 1934, or appeals herefrom to the Secretary of the Interior within the time allowed, his said entry hereby held for cancellation will be canceled, and the case closed, and the moneys heretofore paid forfeited without further notice from this office.

Very respectfully,
FRED W. JOHNSON,
Commissioner.

4-5-fmm

United States
Department of the Interior
General Land Office
Carson City, Nevada,
(Place)

Feb. 11, 1932
(Date)

Serial 015163
Replying to letter "K", dated
Dec. 16, 1931

Claimant: Garaventa Land & Livestock Co.

PROOF OF SERVICE TRANSMITTED.

The Commissioner of the General Land Office.

Sir:

Transmitted herewith is proof of service of the above-mentioned letter. The time allowed thereunder has expired.

Report is made that the party in interest has not made response thereto.

(If additional evidence, appeal or showing made, so state and transmit papers; if registered letter returned unclaimed, transmit same herewith.)

Registry return card herewith.

Very respectfully,

CLARA M. CRISLOR

Register.

(Title)

[Receipt for Registered Article No. 8288 attached
—Addressed to U. S. Land Office—Signed “Frank
L. Garaventa.”]

Carson City 015163 “K” MMJ

:Pyramid Lake Indian Lands.

:Payment required.

Register,

Carson City, Nevada.

Sir:

On September 26, 1931, you were directed to advise the Garaventa Land and Livestock Company that 90 days from receipt of notice would be allowed within which to pay the balance of the appraised price (\$5541.78) on purchase 015163, known as the Garaventa Ranch, within the Pyramid Lake Indian Reservation, together with interest to the date of payment. The records here do not show that claimant has made the payment required. The time al-

lowed has not expired but said decision is hereby revoked.

On November 11, 1931, the First Assistant Secretary approved the recommendation of the Commissioner of Indian Affairs that an extension of time be granted claimants under the act of June 7, 1924 (43 Stat. 596), for 30 days within which to permit them to pay one-third of the deferred payments, together with one-third of the accrued interest, the balance to be paid in two equal installments, with interest, in one and two years from the extension period.

You will advise the claimant in this case that the payments required on its purchase are as follows:

January 31, 1932 — \$2473.39

January 31, 1933 — 2597.06

January 31, 1934 — 2720.73

You will further advise claimant that if the first amount is not paid on or before January 31, 1932, or an appeal filed the purchase, which is hereby held for cancellation will be canceled, the money heretofore paid forfeited and the case closed without further notice from this office.

At the expiration of the time allowed submit report with evidence of service hereof.

Very respectfully,

FRED W. JOHNSON,

Commissioner.

Address Only the Commissioner of the
General Land Office

United States
Department of the Interior
General Land Office
Washington

Nov. 30, 1931.

In Reply Please Refer to
Carson City, 015159 "K" MMJ
015160-015161-015162-015163-
015164-015176-017362.

:Pyramid Lake Indian Lands.

:Request for instructions.

The Secretary
of the Interior.

Sir:

The act of June 7, 1924 (43 Stat. 596), authorized the Secretary of the Interior to sell to the settlers or their transferees under such terms, conditions, and price per acre as he might prescribe any land in the Pyramid Lake Indian Reservation that had been settled upon, occupied and improved by said settlers or their transferees in good faith for a period of 21 years or more immediately preceding the passage of the act.

Regulations under the above act were prepared in this office and approved by the First Assistant Secretary on March 3, 1925. The regulations allowed each claimant 90 days from the date of the approval of the classification and appraisement of the land

within which to pay the appraised price in the district land office. The regulations were modified by telegram approved by the Secretary on May 1, 1925, to allow the payment of one-fourth down and the balance in three equal annual installments with interest on the deferred payments at the rate of 5 per cent per annum.

On August 3, 1931, the First Assistant Secretary approved the recommendation of the Commissioner of Indian Affairs that the claimants in these cases be allowed 90 days within which to make complete payment. In this letter it was stated:

“Should any of the entrymen fail to make prompt payment of the balance of the principal and accrued interest as of date of final payment, steps should be taken by your Office to cancel the entries and permit the lands to revert to the status of incumbered reservation lands as provided by the act of 1924, *supra*.”

On August 11, 1931, this office wrote to the Department pointing out that it had never been the practice of this office to collect interest on purchases of ceded Indian lands except as authorized by the act or regulations making them subject to disposal; that in the opinion of this office there was no authority for collecting interest to the date of payment as proposed by the Indian Service, and that before taking steps looking to the cancellation of the entries in question it was requested that the Department instruct this office how many years interest should be required.

On September 14, 1931, the Assistant Secretary directed that interest should be computed in the following manner:

“Simple interest should be computed on each installment from date of entry to the due date of the respective installments, and the interest should then be added to each unpaid installment, thus forming a new principal which should bear simple interest to the date of actual payment.”

Accordingly, on September 22, 1931, and September 26, 1931, the Register was directed to allow each claimant on whose entry payment has not been made as required by the regulations and telegram above mentioned, 90 days from receipt of notice within which to pay the balance of the purchase price of his entry, together with interest to the date of payment computed as directed by the Assistant Secretary.

On November 9, 1931, the Commissioner of Indian Affairs transmitted to this office a copy of a letter from the Secretary in reply to a telegram from Senator Oddie, in which the Senator was advised that:

“It is believed that these settlers had ample time in which to complete their entries long prior to the period of depression through which the country is now passing, but in order to be fair with the settlers and just to the Indians it may be advisable to permit the settlers to pay

one-third of the deferred payments now on the land together with one-third of the accrued interest. We might then give these settlers two years more in which to complete the payment of principal and interest on the land, but unless full payments are made within the two-year period we can then reject their entries and close out their equities. Should this method be followed, it would be necessary for these people to be prompt in the remainder of their payments, and should they fail or neglect to meet any other deferred payment of principal and interest their entries will be rejected and closed."

The Commissioner's letter which was approved by the First Assistant Secretary on November 11, 1931, states in part:

"In conformity with the arrangement, it is suggested that an extension of time be granted these people for thirty days in which to permit them to pay one-third of the deferred payments together with one-third of the accrued interest, with the understanding that they are to pay one-third within one year and the balance within two years from the extension period."

The Register has already been directed to allow each of the claimants in question 90 days from receipt of notice within which to make payment of the principal with interest computed as directed by the Assistant Secretary on September 14, 1931. This period has not expired. Are the 30 days now to be

allowed to begin to run after the expiration of the 90-day period or concurrently with it?

It would seem that if the claimants are to be allowed further extensions of time within which to pay three deferred installments of the purchase price the proper amount to be required within 30 days would be the first deferred payment, together with interest on that amount computed as directed by the Assistant Secretary on September 14, 1931, to the date of payment; the second and third deferred payments with interest on each installment to the dates of payment to be paid in one and two years respectively. However, according to the suggestions of the Indian Service, approved by the First Assistant Secretary, the amount to be required in 30 days is the first deferred payment of the purchase price, together with one-third of the accrued interest on the three deferred payments, and the balance in one and two years from the extension period. In determining the interest to be collected at the end of the one and two-year extension periods since two-thirds of the interest past due was unpaid at the beginning of said periods, on what amount is it to be computed?

May I respectfully suggest that when a change of procedure is contemplated by the Indian Service in administrative practices within the jurisdiction of the General Land Office but pertaining to Indian matters such proposed changes be submitted by that Service to the Department through this office in order that an opportunity may be had to con-

sider the matter from the standpoint of this office having regard to the working out of the details of the proposed change.

Very respectfully,

Commissioner.

11-27-NBL

United States
Department of the Interior
General Land Office
Washington

Sep 26 1931

In Reply Please Refer To

Carson City 015163 "K" MMJ

: Pyramid Lake Indian Lands

: Payment required

Register,

Carson City, Nevada.

Sir:

On September 16, 1925, this office allowed application 015163 filed by the Garaventa Land and Livestock Company to purchase certain land known as the Garaventa Ranch within the Pyramid Lake Indian Reservation.

The application was filed under authority of the act of June 7, 1924 (43 Stat. 596), and departmental regulations of March 3, 1925. The total purchase price is \$7395.70.

The regulations require that a purchaser pay the appraised price within 90 days from the approval

of the classification and appraisement of the land but by telegram to you approved by the Department on May 1, 1925, the settlers were allowed either to pay all cash or one-fourth down and the balance in three equal annual installments with interest on the deferred payments at the rate of 5 per cent per annum.

From the record in this case it appears that the purchaser paid \$1853.92 as the initial payment, which is more than one-fourth of the purchase price. From the abstract it does not appear that you returned the excess payment.

On August 3, 1931, the First Assistant Secretary approved the recommendation of the Commissioner of Indian Affairs that each purchase under the act of June 7, 1924, *supra*, on which complete payment has not been made be canceled unless within 90 days from receipt of notice the purchaser pays the balance of the principal and accrued interest on his purchase as of the date of final payment.

On August 11, 1931, this office requested instructions from the Department as to how many years' interest should be required and on September 14, 1931, the Assistant Secretary directed that interest be computed in the following manner:

“Simple interest should be computed on each installment from date of entry to the due date of the respective installments, and the interest should then be added to each unpaid installment, thus forming a new principal which should bear simple interest to the date of actual payment.”

You will advise the purchaser that it is allowed 90 days from receipt of notice within which to pay \$5541.78 principal with interest to the date of payment computed as stated above or to appeal to the Secretary of the Interior failing in which the purchase, which is hereby held for cancellation will be finally canceled without further notice from this office.

At the expiration of the time allowed submit report with evidence of service hereof.

Very respectfully,

9-24-NBL

Commissioner.

United States
Department of the Interior
General Land Office
Washington

Aug 11 1931

015163

In Reply Please Refer To

Carson City 015159 "K" MMJ

015160-015161-105162-015163-

015164-015176-017362.

: Pyramid Lake Indian Lands.

: Request for instructions.

The Secretary
of the Interior.

Sir:

On March 3, 1925, the First Assistant Secretary approved regulations for the sale of lands to cer-

tain settlers on the Pyramid Lake Indian Reservation in Nevada as provided by the act of June 7, 1924 (43 Stat. 596).

The act provided that the sale should be by private cash entry. The regulations provided:

“The present claimants of the lands herein listed will be allowed 90 days from February 7, 1925, the date of approval of the classification and appraisement, within which to pay the appraised price of the land at your office, together with the same fees and commissions, as provided by law where public lands are disposed of at \$1.25 per acre.”

By telegram approved by the Secretary on May 1, 1925, the Register at Carson City, Nevada, was directed to allow the settlers either to pay all cash or one fourth down and the balance in three equal annual installments with interest on the deferred installments at the rate of 5 per cent per annum.

The question of reducing the price of these lands has been before the Department many times since the regulations for their disposal were promulgated. The last Congress adjourned without enacting S. 146 which proposed to reduce the price of the lands to \$2.50 an acre. On June 26, 1931, the Commissioner of Indian Affairs requested to be advised of the status of the entries made under said act of June 7, 1924, and on July 6, 1931, he was advised that there were 12 entries made under said act and that patents had issued on 4. On the other

8 entries only the initial payment has been made. He was also advised that since the adjournment of Congress without enacting the relief legislation this office had hesitated to cancel the entries in question in view of the equities of the claimants, the amounts involved and the present economic conditions, but that if in the interest of the Indians it was his wish that the entries be canceled steps to that end would be taken as soon as advice was received from him.

On August 3, 1931, the First Assistant Secretary approved the recommendation of the Commissioner of Indian Affairs that the claimants in these cases be allowed 90 days within which to make complete payment. In that letter it was stated:

“Should any of the entrymen fail to make prompt payment of the balance of the principal and accrued interest as of date of final payment, steps should be taken by your office to cancel the entries and permit the lands to revert to the status of unincumbered reservation lands as provided by the act of 1924, *supra*.”

It has always been held in this office that interest can only be collected on entries or purchases of ceded Indian lands as authorized by the act or regulations making them subject to disposal. By departmental approval of May 1, 1925, these entrymen were allowed to pay one-fourth of the purchase price on or before May 8, 1925, and the balance in three equal annual installments with the interest at

the rate of 5 per cent per annum on the deferred payments. Accordingly, there is no authorization for allowing extensions of time or collecting interest for more than three years. There was ample authority for canceling the entries at the expiration of the three years, but action was suspended pending proposed legislative action.

This office is of the opinion that there is no authority for collecting interest to the date of payment as proposed by the Indian Service and before taking steps looking to the cancellation of the entries in question it is requested that the Department instruct this office how many years' interest shall be required.

Very respectfully,
Acting Commissioner.

8-7-NBL

[Endorsed]: No. 2741. U. S. Dist. Court, District of Nevada. Plff's. Exhibit No. "B" for admission. Filed June 19, 1939. O. E. Benham, Clerk. By _____, Deputy.

We offer in evidence, as government's Exhibit C, in case No. 2742, United States vs. J. A. Cerasola, photostatic certified copies of notices dated February 27, 1936, from the General Land Office, demanding the payment of the purchase price from the defendant, of the amount due on entry, and

prior notices, extending time and demanding payment, and evidence of service thereof upon the defendant. [15]

We offer in evidence, as government's Exhibit D, in case No. 2743, *United States vs. Dominico Cerasola*, certified photostatic copies of first, a letter dated February 27, 1936, from the General Land Office, demanding payment of the amount due from the defendant under the entry within a specified time, and prior notices, demanding payment, and extensions of time and evidence of service thereof upon the defendant.

We offer in evidence as government's Exhibit E, in case No. 2744, *United States vs. M. P. Depoali*, certified photostatic copies of first, letter dated February 27, 1936, from the General Land Office, demanding payment of the money due from the entryman within a specified time, and other prior demands of payment and extensions of time and evidence of service thereof upon the defendant.

We offer in evidence, as government's Exhibit F, in case No. 2745, *United States vs. W. J. Cerasola and Marjorie Cerasola*, certified photostatic copies of a letter dated February 27, 1936, demanding payment of the amount due under the entry within a specified time, and prior demands for payments and extensions of time for payment and evidence of service thereof upon the defendants.

We offer in evidence as government's Exhibit G, in each of the cases, certified photostatic copies of cancellation of the entries 015159 "k" HHS, 015160,

015161, 015162, 015163. In other words, we offer as one exhibit individual photostatic copies of the cancellations of each of the entries in question.

PLAINTIFF'S EXHIBIT G

“B”

NC

United States
Department of the Interior
General Land Office
Washington

June 10, 1939.

I hereby certify that the annexed copy of letter dated May 13, 1936, filed under Carson City 015163, is a true and literal exemplification of the record on file in this office in my custody.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

ANTOINETTE FUNK.

Assistant Commissioner of the
General Land Office.

Address Only the Commissioner of the
General Land Office

United States
Department of the Interior
General Land Office
Washington

May 13, 1936.

In reply please refer to
Carson City 015159 "K" HHS
015160-015161-015162
05163-05164.

Pyramid Lake entries canceled.

Register,
Carson City, Nevada.

Sir:

By letters of February 27, you were instructed to allow the entrymen in the above enumerated entries 30 days from receipt of such letters within which to make payment of the interest due on their respective entries, covering lands within the Pyramid Lake Indian Reservation, in accordance with departmental decisions, A 19148, 19149, 19150, 19151, 19152 and 19153, all dated November 25, 1935.

You have submitted evidence of service of the said letters of February 27, by transmitting registry return receipts showing notices served March 7 on entrymen of entries 015159 and 015160, and notice served March 10 on the remaining four entrymen. You also reported that no action had been taken by the entrymen excepting Guiseppe Gardella, who

made payment of interest of \$237.27 which was the amount called for in entry 015164.

Therefore, since the entrymen holding entries 015159, 015160, 015161, 015162 and 015163 failed to pay the interest required, these entries are hereby canceled and the cases closed.

You will note your records as to the cancellation of the five entries and advise Mr. Gardella that since he has paid the interest called for he will be allowed until September 10, 1936, to make payment of the one-third purchase money due at that time.

Very respectfully,

FRED W. JOHNSON,
Commissioner.

Approved: May 13, 1936

(Sgd.) CHARLES WEST,
Secretary.

[Endorsed]: No. 2741. U. S. Dist. Court, District of Nevada. Plff's Exhibit No. G for admission. Filed June 19, 1939. O. E. Benham, Clerk. By _____, Deputy.

We offer in evidence as Exhibit H, in case No. 2741, United States vs. Garaventa Land & Livestock Company, certified photo- [16] static copies of an appeal from an order of the General Land Office to the Secretary of the Interior by the defendant, Garaventa Land & Livestock Company, and the decision on the appeal.

PLAINTIFF'S EXHIBIT H

“B”

NC

United States
Department of the Interior
General Land Office
Washington

June 10, 1939.

I hereby certify that the annexed copies of papers filed under Carson City 015163, are true and literal exemplification from the records on file in this office in my custody.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal)

ANTOINETTE FUNK

Assistant Commissioner of the
General Land Office.

Department of the Interior
Washington

“K”

Carson City 015163.

Requiring payment of unpaid
purchase money and/or interest.

Modified.

November 25, 1935.

A 19152

Garaventa Land and
Livestock Company

APPEAL FROM THE GENERAL LAND
OFFICE

The Garaventa Land and Livestock Company has appealed from a decision of the Commissioner of the General Land Office dated April 12, 1935, wherein its cash entry, Carson City 015163, was held for *cancellation* and wherein it was directed that it be advised that its entry would be finally canceled unless within thirty days from notice it should pay the unpaid purchase money amounting to \$2,151.78 with interest thereon at 4 percent from September 10, 1925, the date of entry to December 31, 1934, amounting to \$799.73, or make payment of the interest.

Appellant was advised if it paid the interest the entry would not be canceled for nonpayment of principal without giving further opportunity to make the payment.

The appeal in this case presents the same question upon a similar state of facts as that involved in the companion case of J. A. Cerasola, Carson City 015159, in which by decision of this date (A. 19148) the Commissioner's decision was modified. For the reasons stated in a departmental decision A. 19148, a copy of which is made a part hereof, the Commissioner's decision in the present case is modified in the following particulars:

(1) All interest due must be paid within 30 days from the date of service hereof;

(2) One third of the unpaid principal now outstanding must be paid within six months from the date hereof;

(3) The unpaid principal will be computed on the basis of the 1934 reappraisal; and

(4) Interest will be computed by the General Land Office from the date of default.

(Sgd)

T. A. WALTERS,

First Assistant Secretary.

109594

015163-7

United States
Department of the Interior
General Land Office
Washington, D. C.

IN THE MATTER OF LAND PURCHASE BY
GARAVENTA LAND and LIVESTOCK
COMPANY, a Corporation, UNITED
STATES LAND OFFICE CARSON CITY
SERIAL NO. 015163.

APPEAL FROM DECISION AND RULING OF
THE COMMISSIONER OF THE GENERAL
LAND OFFICE.

Comes now Garaventa Land and Livestock Company, a Corporation, and hereby appeals from the decision and ruling of the Commissioner of the General Land Office, which ruling requires the payment of certain principal and interest moneys on land within Pyramid Lake Indian Reservation figured on the basis of the Trowbridge appraisal, involving an entry made under the Act of June 7, 1924 (43 Stat., 596,) which authorizes the sale of the lands "under such terms, conditions and price per acre" as the Secretary of the Interior may prescribe.

This appeal is based upon the ground that since the appraisal by Mr. Trowbridge the value of the land has depreciated to such an extent that it is now out of all proportion to its earning power and market value and out of all proportion to its potential

value; also, upon the ground that the financial depression which began in the year 1929 has reduced the price of all agricultural products to such a point that the earning power of the land at the price fixed in the Trowbridge appraisal is out of proportion to the appraised earning power when the appraisal was made. The appellant also relies upon the fact that all of the lands and equities of appellant are mortgaged to such an extent that the land will not earn interest and taxes on the appraised price of the lands and that appellant's mortgage creditors are threatening foreclosure because of appellant's inability to meet taxes and interest from the products of said land; also, upon the ground that there has been no adequate market for farm products after 1929 down to the present time, during all of which time appellant has been operating said farm business at a loss.

Appellant further states that if the interest and principal as now fixed by the Trowbridge appraisal is required to be paid, it will mean a total loss of the investment which appellant has already placed in the said land.

Wherefore, appellant prays that the said ruling of the Commissioner requiring payment be suspended and that the Honorable Secretary of the Interior cause a re-appraisal to be made under present conditions to the end that a price for said lands may be fixed which will permit appellant to acquire the land and save the existing investment therein.

Dated: July 10, 1935.

W. M. KEARNEY

Attorney for Appellant.

[Endorsed]: No. 2741 U. S. Dist. Court, District of Nevada. Plff's. Exhibit No. "H" for admission. Filed June 19, 1939. O. E. Benham, Clerk. By....., Deputy.

We offer in evidence, as government's Exhibit I, in case No. 2742, United States vs. J. A. Cerasola, an appeal by the defendant, J. A. Cerasola, from an order of the General Land Office to the Secretary of the Interior and the decision by the Secretary of the Interior on the appeal.

We offer in evidence as government's Exhibit J, in case No. 2743, United States vs. Dominico Cerasola, an appeal by the defendant, Domenico Cerasola from an order of the General Land Office to the Secretary of the Interior and the decision of the Secretary of the Interior on that appeal.

Let the record show that in the event I have neglected to so state, that each and all of these records are certified photostatic copies from the General Land Office at Washington, D. C.

We offer in evidence, as Exhibit K, in case No. 2744, United States vs. M. P. Depoali, a certified photostatic copy of an appeal by the defendant, M. P. Depoali, from an order of the General Land Office to the Secretary of the Interior and the de-

cision of the Secretary of the Interior on that appeal.

We offer in evidence, as government's Exhibit L, in case No. 2745, United States vs. W. J. Cerasola and Marjorie Cerasola and others, a certified photostatic copy of the appeal by the defendant, W. J. Cerasola, from an order of the General Land Office to the Secretary of the Interior and the decision of the Secretary of the Interior on that appeal.

We offer in evidence as government's Exhibit M, a certified [17] ed photostatic copy of the application of J. A. Cerasola, dated May 8, 1925, to enter upon the land in question.

We offer in evidence as government's Exhibit N, a certified photostatic copy of the application of Domenico Cerasola, dated May 8, 1925, to enter upon and purchase the land in question. Previous exhibit M is an application to enter upon and purchase the land in question.

We offer in evidence, as government's Exhibit O, the application of M. P. Depaoli, dated May 8, 1925, to enter upon and purchase the land in question.

We offer in evidence a certified photostatic copy, as Exhibit P, of the application of Garaventa Land & Livestock Company, dated May 7, 1925, to enter upon and purchase the land in question.

PLAINTIFF'S EXHIBIT P.

1660896

“B”

United States Department of the Interior
General Land Office.
Washington

November 10, 1936.

I hereby certify that the annexed copy of application, filed under Carson City 015163, is a true and literal exemplification of the original on file in this office in my custody.

In Testimony Whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. H. PARROTT,
Acting Assistant Commissioner of the General
Land Office.

1660896-7

Department of the Interior.
U. S. Land Office, Carson City, Nevada.

No. 015163.

Receipt No. 273888.

APPLICATION TO PURCHASE LAND
UNDER ACT OF JUNE 7, 1924.

Public No. 233.

The undersigned claimant under the provisions of an Act of Congress of the United States of

America, approved June 7, 1924, Public No. 233, hereby applies to purchase the following legal subdivisions of land pursuant to notice of March 3, 1925 under the appraisal of Secretary of the Interior, by reference No. 1,168,548 "K" MMJ, and pursuant to additional notice of May 1, 1925 of Local Land Office, Carson City, Nevada.

Township Twenty (20) North, Range Twenty-four (24) East, M. D. B. & M.:

In Section Four (4) Northeast Quarter of Southwest Quarter ($NE\frac{1}{4}SW\frac{1}{4}$)—40 acres; Northwest Quarter of Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$)—40 acres; Southwest Quarter of Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$)—40 acres; Southeast Quarter of Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}$)—40 acres; South Half of Southwest Quarter of Northwest Quarter ($S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$)—20 acres; South Half of Southeast Quarter of Northwest Quarter ($S\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$)—20 acres;

In Section Nine (9) Lot Seventeen (17) or Northwest Quarter of Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$)—36.14 acres.

The prices to be paid for the said land are governed by the notice of March 3, 1925 and local Land Office notice dated May 1, 1925 under the same heading, or in the event any changes are made in the ruling of March 3, 1925 reducing the prices to be paid for the said land or the terms of payment the undersigned desires and requests the benefit thereof.

Dated: May 7, 1925.

GARAVENTA LAND &
LIVESTOCK CO.

By FRANK L. GARAVENTA.
Vice-President.

United States Land Office at Carson City,
Nevada.

I Hereby Certify that the aforesaid lands as
applied for above are subject to entry by the above
named applicant at the price specified in notice of
March 3, 1925, No. 1,169,548 "K" MMJ.

CLARA M. CRISLOR,
Register.

Above described land not classified properly ap-
plicants reserve the right to file supplementing
maps and classification.

Price of land protected and fee paid under
protest.

GARAVENTA LAND &
LIVESTOCK CO.

By FRANK N. GARAVENTA.

Posted May 19, 1925. F. H. C.

Loose Leaf Vol 110.

Department of the Interior.

U. S. Land Office, Carson City, Nevada.

Under Application to Purchase Land

Under Act of June 7, 1924.

Public No. 233.

Frank L. Garaventa, being first duly sworn, deposes and says: That he is the Vice-President of Garaventa Land & Livestock Company, a corporation organized and existing under and by virtue of the laws of Nevada, and as such Vice-President makes this affidavit for and on behalf of said corporation, occupant and claimant of and for certain lands designated in the application to purchase, attached hereto, under the Act of June 7, 1924, Public No. 233; that the said lands have been settled upon, occupied and improved by the predecessor of claimant in good faith for a period of more than twenty-one years immediately preceding June 7, 1924; that to affiant's personal knowledge the lands described in said application were occupied, settled upon and improved prior to the year 1895, and according to information and belief affiant states that the said lands were occupied, improved and settled upon as early as the year 1865 or prior thereto; that continuously since the year 1895, and according to information and belief, continuously since prior to 1865 and long prior to the proclamation of 1874 fixing the boundary lines of the Pyramid Lake Indian Reservation, the said lands were actually settled upon, occupied and improved by the predecessors in interest of claimant, all in good

faith and with the intention of obtaining title under the laws applicable thereto; that affiant is a citizen of the United States and over the age of twenty-one years. Further affiant saith not.

FRANK L. GARAVENTA.

Subscribed and sworn to before me this 7th day of May, A. D. 1925.

(Seal) GEORGIA NEWMAN,

Notary Public in and for the County of Washoe,
State of Nevada.

CORROBORATIVE AFFIDAVITS.

M. P. Depaoli being first duly sworn, deposes and says: That he has read the affidavit of Frank L. Garaventa attached hereto and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated on information and belief and as to those matters he believes it to be true; that affiant has personal knowledge of the lands referred to in the application attached hereto and upon his oath states that the said lands have been settled upon, occupied and improved by the claimant Garaventa Land & Livestock Co. and its predecessor in interest in good faith for a period of more than twenty-one years immediately preceding June 7, 1924 that affiant is a citizen of the United States and over the age of twenty-one years.

M. P. DEPAOLI

Subscribed and sworn to before me this 7th day of May, A. D. 1925.

GEORGIA NEWMAN.

Notary Public in and for the County of Washoe,
State of Nevada.

W. J. Ceresola being first duly sworn, deposes and says: That he has read the affidavit of Frank L. Garaventa attached hereto and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated on information and belief and as to those matters he believes it to be true; that affiant has personal knowledge of the lands referred to in the application attached hereto and upon his oath states that the said lands have been settled upon, occupied and improved by the claimant Garaventa Land & Livestock Co. and its predecessor in interest in good faith for a period of more than twenty-one years immediately *predeciding* June 7, 1924; that affiant is a citizen of the United States and over the age of twenty-one years.

W. J. CERESOLA.

Subscribed and sworn to before me this 7th day of May, A. D. 1925.

GEORGIA NEWMAN,

Notary Public in and for the County of Washoe,
State of Nevada.

[Endorsed]: No. 2741. U. S. Dist. Court, District of Nevada. Plaintiff's Exhibit No. "P" for admission. Filed June 19, 1939. O. E. Benham, Clerk.

We offer in evidence, as government's Exhibit Q, certified photostatic copy of the application of W. J. Cerasola, dated May 8, 1925, to enter upon and purchase the land in question.

We offer in evidence as government's Exhibit R, in case No. 2744, United States vs. M. P. Depaoli, a certified photostatic copy of a petition by M. P. Depaoli, to reinstate his contract of purchase, dated August 11, 1936; the denial of the petition for reinstatement, with order for money deposited for reinstatement, dated September 30, 1936; cancellation of the entry of the defendant, M. P. Depaoli and demand for payment of the purchase price and appeal from the General Land Office to the Secretary of the Interior, and order on appeal and prior extensions of time.

The Court: We will take a recess until 11:00 o'clock and [18] you can let the Court know in the meantime if you need further time.

Mr. Craven: Exhibit M, application of J. A. Cerasola, case No. 2742; Exhibit N, application of Domenico Cerasola, case No. 2745; Exhibit O, application of M. P. Depaoli, case No. 2744; Exhibit P, application of Garaventa Land & Livestock Company, case No. 2741; Exhibit Q, application of W. J. Cerasola, case No. 2743.

(Recess taken at 10:45.)

11:04 A. M.

Mr. Kearney: I would state, your Honor, we have not had opportunity to read but a very small

portion of the exhibits. We are still not ready to present the formal objection that we desire to make to the offer.

The Court: That can be taken later.

MRS. HUYCK,

a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Craven.

Q. State your name please.

A. Gladys E. Huyck.

Q. Are you employed by the United States Government, Mrs. Huyck? A. Yes, I am.

Q. In what capacity?

A. United States Land Register.

Q. For——

A. District Land Office in and for the District of Nevada.

Q. That covers all the State of Nevada?

A. Yes sir. [19]

Q. How long have you been in that position?

A. Since October 9, 1935.

Q. And as Register you are official custodian of all records and files of the Land Office?

A. Yes sir.

Q. Your offices are in this building in Carson City are they not? A. Yes sir.

Q. Mrs. Huyck, do you have the various land entries in this State designated by number?

A. Yes sir, we do.

(Testimony of Mrs. Huyck.)

Q. Could you tell the Court the name of the entryman, as shown by your records, in case No. 015159 "K"?

Mr. Kearney: I think on those matters the file could be admitted; as far as I am concerned, the names of entrymen that occur in your pleadings are correct? Am I right, Mr. Busey?

Mr. Busey: Yes, there is no objection.

Mr. Craven: I will just state—may the record show that land entry in the Carson Land Office, No. 015159 "K" HHS, 015160, 015161, 015162, and 015163—I think we had better straighten these numbers out and give the proper numbers.

Q. Will you tell us the names of the respective entrymen for those numbers?

A. No. 015159 is J. A. Cerasola; 015160 is W. J. Cerasola; 015161 is Dominico Cerasola; 015162 is M. P. Depaoli; 015163 the Garaventa Land & Livestock Company.

Q. Did you receive a cancellation of each of these entries from the Commissioner of the General Land Office, dated May 13, 1936?

Mr. Kearney: We object on the ground the Commissioner of [20] the General Land Office had no authority, under the Act of 1924, to cancel those entries and that question calls for conclusion; that if a writ of cancellation was made, it speaks for itself and the document legally made by an officer empowered by Congress to make it; therefore, we

(Testimony of Mrs. Huyck.)

object to that particular question upon the ground it calls for conclusion and is incompetent.

The Court: I think the question is preliminary and then the documents may be admitted. Objection for the present will be overruled.

(Question read)

A. I did.

Mr. Kearney: May we take an exception?

The Court: Yes, that may be understood. The documents themselves will control.

Q. Were each of those cancellations in each of the cases approved by the Secretary of the Interior or by the Assistant Secretary of the Interior?

Mr. Kearney: We make that same objection upon the ground——

The Court: I think the objection now is good. If you have the documents——

Mr. Craven: They are in evidence already, your Honor. This is just preliminary.

The Court: I will permit it, subject to the objection.

A. A notice of cancellation was approved and signed by Charles West, Acting Secretary.

Mr. Kearney: I move that the answer be stricken upon the ground that it is conclusion of the witness, because the document and his signature are the best evidence; no foundation laid. [21]

The Court: I understand from counsel those documents are already in evidence.

(Testimony of Mrs. Huyck.)

Mr. Kearney: A lot of those documents offered in evidence are not in evidence yet and are unsigned, a lot of them; self-serving declarations. There are numerous objections we want to file. All the correspondence is not available, therefore, any statement by this witness as to who signed a particular document wouldn't be binding and would be a conclusion, without any foundation having been laid.

The Court: The witness seems to have a paper. You might make some inquiries as to what document that is.

Q. You have that document in your possession?

A. The original letter of cancellation.

Q. This is the original letter of cancellation?

A. Yes sir.

Mr. Craven: We offer this in evidence.

Mr. Kearney: If the Court please, we object to this document, upon the ground, first, there is no foundation laid for its admission; second, upon the further ground that the Commissioner of the General Land Office has no authority or power to cancel or attempt to cancel the particular entries referred to in the document, in that the Act of 1924 did not provide for any cancellation of the entries, except on failure to make the original application to purchase, and there is no rule or regulation promulgated by virtue of the authority of Congress, nor is there any rule or order published by virtue of the Act of Congress which would give the power purported to be contained in this letter from the Com-

(Testimony of Mrs. Huyck.)

missioner of the General Land Office, [22] authorizing said Commissioner or the Secretary of the Interior to cancel these entries in the manner and form in which they attempted to do so.

The Court: For the present the objection will be overruled. It may be admitted subject to the objection. We will take up the legal effect of all of these documents later.

Mr. Kearney: May we have an exception?

Mr. Busey: May it show I make the same objection to the introduction of the letter?

The Court: Yes, it will go to all the cases.

Clerk: Plaintiff's Exhibit S.

The Court: If these official documents now offered are required to be kept in the Land Office, we might consider whether they couldn't be read into the record.

Mr. Craven: I will read this into the record now, your Honor: "The Commissioner of the General Land Office, 7 x R United States Department of the Interior, General Land Office, Washington, May 13, 1936. Received U. S. Land Office May 18, 1936, Carson City, Nevada. In reply please refer to Carson City 015159 "K" HHS — 015160 — 015161 — 015162 — 0151613 — 015164." In red pencil: "9/10/36". The figure 015164 is in red pencil marked with a circle around it——

Mr. Kearney: I suggest that the reporter copy it, it will save time; unless the Court desires to hear it.

(Testimony of Mrs. Huyek.)

The Court: It won't take long, it is short. You might read this one and the others have copied for [23] the record by the reporter.

Mr. Craven: The figures 015164 and the figures in red pencil 9-10-36, have red pencil mark enclosing all of them. In black pencil: "Note, regular mail—5 copies, 1 each A P P E M Pyramid Lake entries cancelled. Register, Carson City, Nevada. Sir: By letters of February 27, you were instructed to allow the entrymen in the above-enumeraged entries, 30 days from receipt of such letters, within which to make payment of the interest due on their respective entries covering lands within the Pyramid Lake Indian Reservation, in accordance with Departmental decisions A-19148, 19149, 19150, 19151, 19152, and 19153, all dated November 25, 1935. You have submitted evidence of service of said letters of February 27, by transmitting registry return receipts, showing notice served on March 7 on entry of entrymen 015159 and 015160 and notice served March 10th on the remaining four entrymen. You also reported no action had been taken by entrymen, excepting Guiseppe Gardella, who made payment of interest of \$237.27, which was the amount called for in entry 015164. Therefore, since the entrymen holding entries 015159, 015160, 015161, 015162, and 015163 failed to pay the interest required, those entries are hereby cancelled and the cases closed. You will note your records as to cancellation of the five entries and advise Mr.

(Testimony of Mrs. Huyck.)

Gardella that since he has paid interest called for, he will be allowed until September 6, 1936 to make payment of one-third of the purchase money due at this time. Very respectfully Fred W. Johnson, Commissioner. Approved May 13, 1936. Charles West, Acting Secretary." At the bottom of the page are the figures "2" and then "52-GB". At the top of the page: "Carson City, [24] 015159 ETC "K" HHS."

Q. Mrs. Huyck, did you send a copy of that letter from the Commissioner, which was approved by the Acting Secretary and which cancelled each of the entries in question, to each of the entrymen?

A. Yes, we did.

Q. Do you have a record of the mailing of those notices?

A. We have a record on our records they were mailed by regular mail, not registered mail.

Q. When? A. On March 9th. On——

Mr. Kearney: May I inquire—you are reading from something, is that your handwriting?

A. No, this is not. This is the record of the office and the clerk.

Mr. Kearney: Then I object to it on the ground it is incompetent.

The Court: If it is the official record——

A. It is the official record.

The Court: Objection overruled.

Mr. Kearney: Exception.

A. May 18, 1936 the cancellation notices were mailed.

(Testimony of Mrs. Huyck.)

Q. To each of the entrymen as shown by your records? A. Yes, sir.

Q. Were the copies of those letters contained in a franked envelope and deposited in the Carson City postoffice? A. Yes sir.

Mr. Kearney: We move the answer be stricken as conclusion [25] of the witness; unless some record for it, it is purely hearsay. Unless she did it herself, I move the answer be stricken until I can have an objection.

Mr. Craven: I might point out they admitted in their answer they received notice.

Mr. Kearney: I am sure Mr. Depoali hasn't admitted it; I don't know about the others.

The Court: Well, this witness, as I understand it, is *testify* from the records. You have a memorandum to that effect that you are testifying from?

A. Yes sir, we have.

Mr. Kearney: All she is testifying is what the record shows. She can't testify there was a franked envelope dropped in the mail unless she did it herself or saw it done. It is going beyond what the record states. The record merely states the letter was mailed or something of that kind and they can't go that far.

(Question and answer read)

Mr. Kearney: I move the answer be stricken for the purpose of the objection.

Mr. Craven: The testimony shows that is what was done.

(Testimony of Mrs. Huyek.)

The Court: Well, I will permit the witness to testify if they were sent out in the usual way.

A. They were: I usually mail them myself. Of course, I can't testify as to these particular ones, but they all go out in franked envelopes and are mailed in the Carson City postoffice.

Q. At that time you were Register of the Carson City Land Office? [26]

A. I was Register and I usually attend to that myself.

Mr. Kearney: I would like the record to show an exception, if your Honor please?

The Court: Exception may be noted.

Q. Did you receive from the General Land Office a letter dated February 27, 1936, approved by the Secretary of the Interior, or the Acting Secretary, in which each of the entrymen were allowed 30 days from service of that letter by you in which to make payment of interest due as of March 31, 1936, failing in which the entry was to be held for cancellation?

A. Yes sir, we did.

Q. Have you that letter?

A. Yes sir, in each case.

Mr. Craven: We offer each of these in evidence.

The Court: Those might be marked for identification and then considered later.

Mr. Kearney: I object to it as incompetent, irrelevant and immaterial; no foundation laid for its introduction in evidence, and upon the further

(Testimony of Mrs. Huyck.)

ground that it is outside and beyond the power of the particular officer to attempt to cancel, not authorized by Congress or any act of Congress.

Mr. Busey: If the Court please, I would like to make the same objection, that no proper foundation has been laid nor is the order within the scope of the authority of the Secretary of the Interior as granted him by the Act of June 7, 1924. I would like also to make the further objection that the appeal from the General Land Office, attached to the letter, contains a great deal of self-serving matter. It contains the letter of August 30, [27] 1935, in which the Commissioner of Indian Affairs urges denial of the appeals and sets forth his reasons for urging these denials. If the Court please, we would like to object to that portion of the document on the ground it is purely self-serving.

Mr. Kearney: I hadn't noticed there were some exhibits or something else attached to these, some mimeographed copies and I join in the objection made by counsel for certain of the entrymen. The mimeographed copies are no part of the letter.

The Court: For the present the objection will be overruled. They may be admitted with the understanding that they are subject to the objection and all legal questions will be reserved for later consideration.

Mr. Kearney: Exception your Honor.

The Court: Exception may be noted.

Mr. Busey: We also ask an exception.

(Testimony of Mrs. Huyck.)

The Court: Exception in all cases.

Q. Each of the letters has attached to it appeal from the General Land Office applicable to that particular case—did you receive those just this way? A. Yes, we did.

Q. And were those papers attached to the letters? A. Yes sir.

Mr. Craven: We offer these in evidence as one exhibit. May the reporter be instructed, your Honor, to transcribe those into the record so the Register can obtain these originals at a later date.

Mr. Kearney: If they offer photostatic copies, I don't see any necessity of copying these into the record. [28]

Mr. Craven: We will ask to just hold them until a later date and have the Register withdraw them at the proper time.

The Court: They may be marked and later on returned to the Register.

(Testimony of Mrs. Huyck.)

PLAINTIFF'S EXHIBIT T.

Address Only the Commissioner of the General
Land Office.

1 Enc.

1 x R

United States Department of the Interior.

General Land Office.

Washington

Feb. 27, 1936.

In Reply Please Refer to
Carson City 015163 "K" JEW
Garaventa Land & Livestock Company,
Pyramid Lake Indian Reservation.

Payment required.

Register,

Carson City, Nevada.

Sir:

On July 15, 1935, claimant, Garaventa Land & Livestock Company, by their attorney, William M. Kearney, filed an appeal with the Secretary of the Interior, from office decision of April 12, 1935, whereby it was held that claimant would be allowed 30 days within which to make payment in full of the unpaid purchase money, together with interest at four per cent from September 16, 1925, the date of allowance of the entry, to December 31, 1934, or to make payment of the interest only. They were advised if they paid the interest, their entry would not be canceled for non-payment of principal, without giving them further opportunity to make the payment.

(Testimony of Mrs. Huyck.)

On November 25, 1935, the Secretary of the Interior modified said office decision in the following particulars:

(1) All interest due must be paid within 30 days from the date of service hereof;

(2) One-third of the unpaid principal now outstanding must be paid within six months from the date hereof;

(3) The unpaid principal will be computed on the basis of the 1934 reappraisal; and

(4) Interest will be computed by the General Land Office from the date of default.

A recomputation shows \$2,151.78 purchase money due and unpaid as of September 16, 1928, together with interest at four per cent from September 16, 1926, to date of payment which, if the principal is not paid until March 31, 1936, will amount to \$701.09.

You will allow claimant 30 days from the date of service hereof, within which to make payment of \$701.09 interest due as of March 31, 1936, failing in which, the said entry, hereby held for cancellation, will be canceled and the case closed without further notice from this office.

In due time report, transmitting evidence of service of notice.

Very respectfully,
FRED W. JOHNSON,
Commissioner.

(Testimony of Mrs. Huyck.)

Department of The Interior.

Washington.

A. 19152

November 25, 1935.

“K”

- : Carson City 015163.
- : Requiring payment of unpaid
purchase money and/or interest.
- : Modified.

Garaventa Land and Livestock Company

APPEAL FROM THE GENERAL LAND OFFICE.

The Garaventa Land and Livestock Company has appealed from a decision of the Commissioner of the General Land Office dated April 12, 1935, wherein its cash entry, Carson City 015163, was held for cancelation and wherein it was directed that it be advised that its entry would be finally canceled unless within thirty days from notice it should pay the unpaid purchase money amounting to \$2,151.78 with interest thereon at 4 percent from September 10, 1925, the date of entry, to December 31, 1934, amounting to \$799.73, or make payment of the interest.

Appellant was advised if it paid the interest the entry would not be canceled for nonpayment of principal without giving further opportunity to make the payment.

The appeal in this case presents the same question upon a similar state of facts as that involved

(Testimony of Mrs. Huyck.)

in the companion case of J. A. Cerasola, Carson City 015159, in which by decision of this date (A. 19148) the Commissioner's decision was modified. For the reasons stated in a departmental decision A. 19148, a copy of which is made a part hereof, the Commissioner's decision in the present case is modified in the following particulars:

(1) All interest due must be paid within 30 days from the date of service hereof;

(2) One third of the unpaid principal now outstanding must be paid within six months from the date hereof;

(3) The unpaid principal will be computed on the basis of the 1934 reappraisal; and

(4) Interest will be computed by the General Land Office from the date of default.

(Signed) T. A. WALTERS,
First Assistant Secretary.

109594

United States Department of The Interior.
General Land Office.
Carson City, Nevada,
March 9, 1936.

Serial 015163

Garaventa Land & Livestock Co.,
Wadsworth, Nevada.

This office is in receipt from the Commissioner of the General Land Office of a decision involving

(Testimony of Mrs. Huyck.)

the entry or application whose serial number is noted above.

Thirty days from notice are allowed within which to comply with the requirements of the Commissioner, or to appeal therefrom to the Secretary of the Interior; and upon your failure to take action within the time specified the case will be reported for appropriate action. Any showing in response to said decision must be filed in this office, and should refer to the serial number above noted.

The Commissioner's decision, copy of which is inclosed, requires payment etc.

Very respectfully,

.....,
Register.

United States Department of the Interior.
General Land Office.
Carson City, Nevada,
April 14, 1936.

Serial 015163.

Replying to letter "K", dated
February 27, 1936.

Claimant: Garaventa Land & Livestock Co.

PROOF OF SERVICE TRANSMITTED

The Commissioner of the General Land Office.
Sir:

Transmitted herewith is proof of service of the above-mentioned letter. The time allowed thereunder has expired.

(Testimony of Mrs. Huyck.)

Report is made that the party in interest has not made response thereto.

(If additional evidence, appeal or showing made, so state and transmit papers; if registered letter returned unclaimed, transmit same herewith.)

Registry return card herewith.

Very respectfully,

Register.

[Endorsed]: No. 2741-2745. U. S. Dist. Court, District of Nevada. Plff's. Exhibit No. "T". Filed June 19, 1939. O. E. Benham, Clerk. By....., Deputy.

Q. *Mr. Huyck*, did you send a copy of the letter to each of the entrymen concerning his particular entry? A. Yes sir, I did.

Q. How did you send it?

A. By registered mail.

Q. Did you request a return receipt?

A. Yes sir.

Q. And did you receive those return receipts?

A. Yes sir.

Q. When did you mail those registered letters?

A. On March 9, 1936 to Garaventa Land & Livestock Company; March 5—

Q. Just a minute before you proceed further. When was the document sent to the Garaventa Land & Livestock Company received by them?

(Testimony of Mrs. Huyck.)

A. I will have to get these other cards, if I may.
Was delivered on March 10, 1936.

Q. The next one, when was it sent and when was it received?

A. The 015159 was received on March 7, 1936; it was sent on March 6th.

Q. Sent to whom and received by whom?

A. J. A. Cerasola and signed by J. A. Cerasola.

[29]

Q. The next one?

A. 015160, W. J. Cerasola, was received on March 7, 1936.

Q. When was it sent?

A. March 5th. Domenico Cerasola, 015161, was delivered on March 10th.

Q. 1936? A. 1936.

Q. When was it sent?

A. On March 9, 1936 it was mailed.

Q. The next one.

Mr. Kearney: Who did you say signed that?

A. W. J. Cerasola.

Mr. Kearney: Domenico Cerasola didn't sign it?

Mr. Boyle: He was dead at that time, wasn't he?

Q. What is the next one?

A. The next one is 015162, M. P. Depaoli, and it was delivered on March 10, 1936, signed by M. P. Depaoli.

Q. When was it sent? A. March 9th.

Q. Did you receive from the General Land Office

(Testimony of Mrs. Huyck.)

letters dated December 15, 1931, applicable to each of these entires, and did you send copies of those to each of the entrymen?

Mr. Kearney: What is the purpose of those behind 1936? We object to that on the ground they are incompetent, irrelevant, and immaterial and not covering any matter in issue in the complaint.

Mr. Busey: Same objection.

Mr. Craven: May I have this understanding, then, with [30] counsel, that on May 22, 1935, there was a demand made and sent to the Garaventa Land & Livestock Company and to M. P. Depoali for the amount of money that was due under the entry; the same dated May 23, 1935 as to Domenico Cerasola; the same as to W. J. Cerasola, May 22, 1935, and the same as to J. A. Cerasola, April 15, 1935?

Mr. Kearney: What is the purpose for it?

Mr. Craven: Simply to show that demands have been made prior to the last demand upon which was predicated the cancellation of the entry.

Mr. Kearney: It seems to me to be immaterial. The first one would be superseded if it were proper demand then and later by the second one.

Mr. Craven: That is true. We simply wish to make an offer of proof at this time that on successive occasions, from 1931 thru 1935 and 1936, demands were made on each of the entrymen and each of the defendants for payment of the amount of the purchase price of the land, and on successive

(Testimony of Mrs. Huyck.)

and several occasions extensions were granted for the payment of the purchase price, until the final demand in 1936, upon which the cancellation was finally predicated.

Mr. Kearney: What is the allegation on this?

Mr. Craven: There is no allegation. The allegation, your Honor, in the complaint is that that ultimate fact, that their entries were finally cancelled for amount of payment not made within the time required, 1936.

Mr. Kearney: I think it is immaterial, your Honor, I think the allegation is not supported and not material to any issue in [31] the complaint. In other words, if counsel have a different theory—the question of the introduction of that letter would place the whole case on a different theory from that which it is placed on now, if it is placed on contractual basis by demand and right to cancel by failure and refusal after demand. We renew our objection—it is incompetent, irrelevant and immaterial and not directed to an issue or allegation of the complaint.

The Court: You are only making offer to prove, as I understand it?

Mr. Craven: Yes, your Honor.

The Court: Have you the record available?

Mr. Craven: Yes, your Honor.

The Court: I will permit it, subject to the objection and consider it later.

Mr. Kearney: May we take an exception?

(Testimony of Mrs. Huyck.)

The Court: Exception may be noted.

Mr. Kearney: If they are material at all—I suppose they were mailed; if counsel says they were mailed to the entrymen, I don't want to take up any time making proof, except as to the admissibility of them and the materiality of them, as I have indicated in my objection.

Mr. Busey: Those demands for payment were for the contract price?

Mr. Craven: Some were and some were not. Some were prior to 1934.

Mr. Busey: May we have the same objection in the other cases, your Honor?

The Court: The record may so show. [32]

Mr. Kearney: Subject to the objection, to save time counsel may read into the record what he desires to prove.

Mr. Craven: I think I have already stated some of the dates and on December 28, 1931 there was mailed to Garaventa Land & Livestock Company, M. P. Depoali, Domenico Cerasola, W. J. Cerasola, and on December 23, 1931 to J. A. Cerasola demands for payment of the sums due under the entry and the subsequent demands in 1935, which I previously mentioned, by registered mail. I think that is all I have of this witness.

Cross-Examination

By Mr. Kearney:

Q. Have you any record of any kind that you

(Testimony of Mrs. Huyck.)

sent notices to the attorney who appeared in the cases, especially notice of appeal and action on appeal? A. It will be on this record if any.

Q. For instance, the letter of May 18, 1936, you never sent notice to any attorneys who appeared in the case, Mr. McKnight or myself?

Mr. Craven: Objected to as immaterial. It doesn't make any difference whether the attorneys were furnished notices or not.

The Court: I will permit the question.

Mr. Craven: Exception.

A. In one case here, June 26, 1935, tissue copy of Commissioner's letter of June 26, 1935 to Mr. McKnight, attorney, at Reno.

Q. That is the only letter?

A. The 30 days have expired for appeal. That is in the case of J. A. Cerasola. In the case of W. J. Cerasola, tissue copy was mailed to Mr. Wm. McKnight at Reno, granting 30 days' extension for appeal; and the same is true of Domenico Cerasola [33] and of M. P. Depaoli, also of the Garaventa Land & Livestock Company.

Q. That was letter of May 22, 1935?

A. Yes.

Q. Extending time 30 days to take appeal, that is correct, is it not? A. Yes sir.

Q. Now, then, on letter of May 18, 1936, have you any such notice?

A. Just the tissue copy mailed to the entrymen, not to the attorney.

(Testimony of Mrs. Huyck.)

Q. Those are letters sent and mailed out to entrymen on March 6 and March 9, 1936, as you have already testified? A. Yes sir.

Q. And without any notice to the attorney who made the appeal?

A. The only notation copy has been mailed to the attorney was extension of time, 30 days, to file an appeal.

Mr. Kearney: I think that is all.

Mr. Busey: We have no questions.

Mr. Craven: May I ask one other question I perhaps should have asked on direct examination.

Q. (Mr. Craven) Notices demanding payment in 1936 which were, I think, copies of letters dated February 27, 1936 from the Commissioner of the General Land Office, which were sent by registered mail, do you have the registry numbers of each of those letters?

A. Yes sir, I think we have. Garaventa Land & Livestock Company was 4990; M. P. Depaoli, 4991; Dominco Cerasola, 4993; W. J. Cerasola 4963; W. J. Cerasola, 4964. [34]

Mr. Kearney: What did you say those dates were please?

A. March 5th for J. A. Cerasola and W. J. Cerasola and March 9th for Garaventa Land & Livestock Company and M. P. Depaoli and Dominco Cerasola.

Q. (Mr. Craven) Mrs. Huyck, I call your at-

(Testimony of Mrs. Huyek.)

tention to plaintiff's Exhibits B, C, D, E, and F, and particularly the photostatic copies of registry return receipts in Exhibit B, No. 4990. Is that the photostatic copy of the original return receipt you just testified from? A. Yes sir.

Q. Exhibit C, calling your particular attention to photostatic copy of registry receipt 4963, is that the photostatic copy of the original receipt that you just testified to? A. Yes sir.

Q. Exhibit D, calling your particular attention to photostatic copy of the registry receipt 4993, is that the photostatic copy of the original receipt that you just testified to? A. Yes sir.

Q. Exhibit E, calling your particular attention to photostatic copy of registry return receipt 4991, is that the photostatic copy of the original receipt that you just testified to? A. Yes sir.

Q. Exhibit F, calling your particular attention to photostatic copy of registry return receipt No. 4964, is that the photostatic copy of the original receipt which you just testified to? A. Yes sir.

Mr. Craven: That is all, Mrs. Huyek.

Your Honor, I handed up copy of the Act in question, could [35] that be filed in the case?

The Court: It may be filed. I assume that is the published statute.

Mr. Craven: It is, your Honor. I just want it filed for the convenience of the Court.

MR. BATH,

a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Craven:

Q. Will you state your name please?

A. Ernest Bath.

Q. Do you occupy any position with the Federal government?

A. Postmaster.

Q. Postmaster at Carson City, Nevada?

A. Yes sir.

Q. How long have you been such?

A. Since March, 1935.

Q. As such, you are the official custodian of all the records and files of the postal department in Carson City, Nevada, is that correct?

A. Yes sir.

Q. Do you have record of a registered parcel or letter bearing registry number No. 4990?

A. Yes sir.

Q. By whom was it sent, to whom and when?

A. It was sent from the United States Land Office to Garaventa Land & Livestock Company, Wadsworth, on 3-9-36.

Q. You have a record of registered parcel or article No. 4991?

A. Yes sir. [36]

Q. By whom was it sent, to whom and when?

A. It was sent from the United States Land Office to M. P. Depaoli at Wadsworth, 3-9-36.

(Testimony of Mr. Bath.)

Q. No. 4993?

A. From the United States Land Office to Domenico Cerasola, Wadsworth, 3-9-36.

Q. No. 4964?

A. From the United States Land Office to J. A. Cerasola, Wadsworth, on 3-5-36.

Q. 4963?

A. From the United States Land Office to J. A. Cerasola at Wadsworth, 3-5-36.

Mr. Craven: Mr. Kearney, I would like the same offer to prove by this witness that he sent registered articles dated May 22, 1935, to the Garaventa Land & Livestock Company and M. P. Depaoli and W. J. Cerasola; on May 23, 1935 to Domenico Cerasola; on April 15, 1935 to J. A. Cerasola; on December 28, 1931 to Garaventa Land & Livestock Company and M. P. Depaoli, Demenico Cerasola and W. J. Cerasola and on December 23, 1931 to J. A. Cerasola; on each of those respective dates to the respective persons named, registered letters were sent by the Land Office in Carson City.

Mr. Kearney: I have no objection so far as proof of sending is concerned, if that be the fact, but I do object to the documents and their contents on the same grounds as I objected heretofore, that they are without any issue in this proceeding, outside the issues, and are wholly irrelevant and immaterial and including all the objections I made to the so-called demands, [37] which were made

(Testimony of Mr. Bath.)

prior to any demand that might have been offered in the pleadings as of 1936.

Mr. Craven: I just offer to prove by this witness that certain registered parcels were mailed to various defendants or protestants, that is all.

The Court: This relates to the same offer?

Mr. Craven: To make the matter clear, Mr. Kearney has stipulated that we did send various demands on these various defendants, but he has objected to its materiality and it is stipuated, subject to that objection, and we are just following that up with this witness that they were sent by registered mail, that is all.

Mr. Kearney: For instance, the so-called demands were made and then they were overruled and appeal taken and extensions granted, so they are becoming material in any event. I have covered the objection to the demands themselves which were offered by letter in 1931 and 1935.

The Court: As I understand it, it is the same matter we had here heretofore.

Mr. Kearney: Yes, except now he is offering to prove that they were sent by registered mail.

The Court: They may be admitted, subject to the objection. We will consider all those matters later.

Mr. Busey: What was the date on which the letter of 1935, I believe in May, was sent to Domenico Cerasola?

(Testimony of Mr. Bath.)

Mr. Craven: In 1935, that was one of the matters I asked you to stipulate to, May 23, 1935.

Mr. Busey: I just wanted to get that date.

Mr. Craven: That is correct, Mr. Bath—the registry number [38] is 3126?

A. Yes, 5-23-35.

Mr. Busey: That is all, thank you. I just wanted to get that date. No further questions.

MISS BOWLER,

a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Craven:

Q. Your name is Alida C. Bowler?

A. Yes.

Q. You are superintendent of the Carson Indian Agency? A. Yes.

Q. And as such the Pyramid Lake Indian Reservation is under your supervision?

A. Yes.

Q. Were you superintendent of the Carson Indian Agency during all the year 1936?

A. Yes.

Q. Did you, on or about June 2, 1936, mail to the Garaventa Land & Livestock Company, M. P. Depoali, Domenico Cerasola, W. J. Cerasola, and

(Testimony of Miss Bowler.)

J. A. Cerasola, a letter concerning their entry and right to purchase certain land within and upon the Pyramid Lake Indian Reservation?

Mr. Kearney: Objected to as incompetent, irrelevant and immaterial—whether she did or not is immaterial. She has no power to control the Secretary of the Interior or the Acts of Congress, except by special Act of Congress and the authority within the special Act of Congress, and whether she sent a letter or not, I submit is wholly immaterial, regardless of what the letter is. [39]

Mr. Busey: Same objection.

The Court: We will take the testimony subject to the objection and consider it later.

Mr. Kearney: Exception.

Q. Will you answer the question?

A. Yes.

Q. How were those letters sent?

A. By registered mail.

Q. You have copies of them in your possession?

A. Yes.

Mr. Craven: We demand the originals from the defendants.

Mr. Kearney: We don't know anything about them.

A. There are receipts attached.

Mr. Craven: We ask that this be marked for identification please.

Clerk: Plaintiff's Exhibit U for identification.

(Testimony of Miss Bowler.)

PLAINTIFF'S EXHIBIT U
(For Identification)

Carson Indian Agency
Stewart, Nevada
June 2, 1936

Garaventa Land & Livestock Company
c/o Frank L. Garaventa
Wadsworth, Nevada.

Subject Cancellation Entry 015163

Gentlemen:

The Commissioner of Indian Affairs has advised us that your Pyramid Lake Entry 015163 covering 236.14 acres of land has ben cancelled because of your failure to make the required payments under the contract. The land is to be returned to the possession of the Pyramid Lake Reservation Indians. The Register of the Land Office at Carson City advises that a notice of this cancellation was mailed to you on May 18.

Following instructions received from Washington and on behalf of the Pyramid Lake Indians I am hereby serving notice that you are to vacate the Pyramid Lake Indian Reservation Land covered by this entry on or before September 30, 1936.

This date was selected by the Pyramid Lake Tribal Council in conference with me at a meeting held on last Thursday, May 28. The Indians decided to be reasonable and not to require too early re-

(Testimony of Miss Bowler.)

moval because it is our understand that you have put in certain crops this year and because you will need time to make arrangements for establishing yourselves elsewhere. At this same meeting it was decided that as tenants of the Pyramid Lake Indian Reservation you should be required to pay a reasonable share of this year's crop raised on Indian Lands to the Reservation as rental. I have consulted the University of Nevada Extension Division, which we believe to be an unbiased organization, as to what might be considered a fair crop share. On their advice I am asking that in the harvesting of your crops the following amounts be set aside as rental payments to the Indians.

Potatoes and other garden truck.....	1/4
Grain	1/3
Alfalfa	1/2

Should you wish to discuss these arrangements with the Tribal Council and the Agency please so advise and we will arrange a meeting for that purpose.

Sincerely yours,

ALIDA C. BOWLER,

Superintendent

ACB/gcp

cc—Commissioner of Indian Affairs (2)

Pyramid Lake Tribal Council

[Receipt for Registered Article No. 156 Attached
—addressed to Carson Ind. Agency, Stewart Ne-

(Testimony of Miss Bowler.)

vada—signed “Garaventa Land & Livestock Co., by Joe Garavento.”]

[Endorsed]: No. 2741-2745 U. S. Dist. Court, District of Nevada. Plff’s. Exhibit No. “U” for Ident. Filed June 19, 1939. O. E. Benham, Clerk. By....., Deputy.

Q. Calling your attention to government’s Exhibit U for identification, are these full, true and correct copies of the letters sent to each of the persons I have heretofore named? A. Yes.

Q. They were sent by registered mail?

A. Yes.

Mr. Craven: We offer them in evidence.

Mr. Kearney: We object on the ground no foundation has been laid; wholly irrelevant and immaterial, regardless of the contents.

Mr. Busey: Same objection, if the Court please.

The Court: The ruling might be reserved. If the registry receipts show a return, that might be important; [40] show that they were delivered.

Q. Did you write those letters pursuant to any instructions from the Commissioner of Indian Affairs? A. Yes.

Q. I show you government’s Exhibit V for identification and ask you whether or not that is letter of instruction to you to write the letters mentioned? A. It is.

(Testimony of Miss Bowler.)

Mr. Craven: We offer this in evidence.

Mr. Kearney: If the Court please, I object to the offer upon the ground that the Commissioner of Indian Affairs has no jurisdiction or authority over the lands in the Pyramid Lake Indian Reservation, excluding the town of Wadsworth, set aside and set apart for Indian Reservation by the Act of 1924; therefore, any letter from the Commissioner to Miss Bowler is wholly irrelevant and immaterial and incompetent and does not tend to prove or disprove any issue in this case. It is purely a self-serving document.

Mr. Busey: Same objection, if the Court please.

Mr. Kearney: And upon the further ground there is no foundation laid for the offer.

Mr. Craven: Your Honor, that is all predicated upon the legal question whether or not the Secretary of the Interior had power and authority to cancel the entries. If he did not, the letter, of course, is inadmissible. If he did have such power, then the letter is admissible, for the reason that the Act of June 7, 1924 expressly provides that in the event of those lands reverting to the government, they shall revert to the Piute Indian [41] tribes of the Pyramid Lake Indian Reservation and of which Commissioner Collier, of course, had jurisdiction, and both U and V, the letter from the Commissioner of Indian Affairs, instructing the witness to write letters to the new entries, and letters from the witness to each of the entrymen, making demand on them to yield the premises, are pertinent

(Testimony of Miss Bowler.)

to show the demand to yield the premises that they have been holding unlawfully since the cancellation of the entry, which they have been doing as alleged in the complaint.

The Court: I am inclined to think they should be admitted, at least for the purpose of the case. I can reserve ruling. If you have any questions you want to ask the witness, I suggest counsel get together. We will take a recess until 1:30.

(Recess taken at 12:10).

PLAINTIFF'S EXHIBIT V

Address Only the

Commissioner of Indian Affairs

Refer in Reply to the Following:

L-A

2839

United States

Department of the Interior

Office of Indian Affairs

Washington

Airmail

May 20, 1936

Miss Alida C. Bowler,
Supt., Carson Agency.

My dear Miss Bowler:

There are enclosed two copies of a General Land Office letter of May 13, approved by the Acting Secretary on the same date, canceling certain homestead entries on the Pyramid Lake Reservation because of the failure of the entrymen to comply with

(Testimony of Miss Bowler.)

Departmental decisions of November 25, 1935.

The entrymen do not have the right of appeal. You should give the entrymen notice that they will be required to vacate the lands. Written notice should be given each and a copy of the notice forwarded to this Office. A reasonable time should be allowed each to remove from the lands. In determining what is a reasonable time in each case, you should consider the time which will actually be required by each and also the fact that in the past the Department has been very liberal toward these entrymen, which undoubtedly caused them to become more permanently located than they would have otherwise. It is not now expected that you will grant them any special privileges. However, you should also refrain from causing them any undue hardship.

Official notice of the cancellations will be given the entrymen by the Register of the local land office at Carson. You should ascertain when such notice is given and not serve notice to vacate upon the entrymen until after they have been formally notified of the cancellations.

Please keep this Office advised of all developments. If the entrymen do not vacate within the periods granted by you, prompt report should be made setting forth all facts.

Sincerely yours,

WM. COLLIER,
Commissioner.

Enclosure 1119995

(Testimony of Miss Bowler.)

United States
Department of the Interior
General Land Office
Washington

May 13, 1936

In reply please refer to
Carson City 015159 "K" HHS
015160-015161-015162
015163-015164

Pyramid Lake entries canceled.

Register,
Carson City, Nevada.

Sir:

By letters of February 27, you were instructed to allow the entrymen in the above enumerated entries 30 days from receipt of such letters within which to make payment of the interest due on their respective entries, covering lands within the Pyramid Lake Indian Reservation, in accordance with departmental decisions, A 19148, 19149, 19150, 19151, 19152 and 19153, all dated November 25, 1935.

You have submitted evidence of service of the said letters of February 27, by transmitting registry return receipts showing notices served March 7 on entrymen of entries 015159 and 015160, and notice served March 10 on the remaining four entrymen. You also reported that no action had been taken by the entrymen excepting Guiseppe Gardella, who made payment of interest of \$237.27 which was the amount called for in entry 015164.

(Testimony of Miss Bowler.)

Therefore, since the entrymen holding entries 015169, 015160, 015161, 015162 and 015163 failed to pay the interest required, those entries are hereby canceled and the cases closed.

You will note your records as to the cancellation of the five entries and advise Mr. Gardella that since he has paid the interest called for he will be allowed until September 10, 1936, to make payment of the one-third purchase money due at that time.

Very respectfully,

FRED W. JOHNSON

Commissioner.

Approved: May 13, 1936.

(Sgd.) CHARLES WEST

Acting Secretary.

[Endorsed]: No. 2741-2745 U. S. Dist. Court, District of Nevada Plff's Exhibit No. "V" for Ident. Filed June 19, 1939. O. E. Benham, Clerk. By _____, Deputy.

Afternoon Session

1:30 P. M.

Mr. Craven: We have no further questions on direct examination.

At this time we offer in evidence all those certified documents we have heretofore offered in each of the cases before the Court, where any of those exhibits might apply to that particular case.

(Testimony of Miss Bowler.)

Mr. Kearney: We have not had a chance yet to read them all during the noon hour, your Honor, they are quite long, but I do want the general objection to go in at this time, with the right to make the further objection after we read them, that the docu- [42] ments are self-serving in many respects and I want to point out the particular ones that are purely self-serving; that they are, for the purposes of this case, irrelevant, incompetent and immaterial, particularly in that they are letters and documents outside the scope of the Act of 1924, by which the lands of the five defendants, covered by entries of the five defendants under the Act of 1924, were withdrawn from the Indian Service entirely, withdrawn by Congress, from the jurisdiction of the Commissioner of Indian Affairs, and that since that time the monies only that are coming from those lands are available for the Indian fund, and not the lands themselves; that many of the documents which are mixed up indiscriminately in the various exhibits do not bear signatures and they are copies which are interdepartmental letters, which do not affect and can not affect the rights of the defendants to the occupation and control of the land; that there is no foundation laid for the offers, nor any of them. I want to supplement that objection after I read each one, by making it more specific, and if it might be understood that we could even put them in writing, I would like to do so, with the Court's permission.

(Testimony of Miss Bowler.)

Mr. Boyle: You mean to write a brief?

Mr. Kearney: Oh no—we will do that of course, later. I mean before—obviously, I haven't had time to read 250 pages or more of photostatic copies of records and letters, which were for the first time presented to us at 10:00 o'clock this morning, or later.

Mr. Busey: If the Court please, I would like the same objection to go to the three cases I represent.

[43]

The Court: I will permit a brief written statement of objections to be filed later. Any cross-examination?

Mr. Kearney: No, no cross-examination.

Mr. Craven: The government rests.

Mr. Kearney: Mr. Depaoli, will you take the stand please?

MR. DEPAOLI,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Kearney:

Q. What is your name please?

A. M. P. Depaoli.

Q. You are one of the defendants in this action
Mr. Depaoli? A. Yes.

Q. Where do you live at the present time?

A. On a ranch.

Q. Where?

(Testimony of Mr. Depaoli.)

A. One and one-half miles below Wadsworth.

Q. And is some of the land involved in that particular ranch designated in this suit as covered by entry of the application to purchase that you made in 1925?

A. It is.

Q. Have you any patented land there?

A. I have.

Q. How much patented land is involved in your ranch?

A. 160 acres.

Mr. Craven: We object and move the answer be stricken, on the ground it is incompetent, irrelevant and immaterial, has no bearing upon the issues in this case.

The Court: We will consider that later. The objection will [44] be overruled for the present. It may stand subject to the objection.

Mr. Craven: Exception.

Q. How many acres of patented land have you?

A. 160.

Q. How did you acquire that land, thru State patent or Federal patent, or how?

Mr. Craven: Same objection.

The Court: Same ruling.

Mr. Craven: Exception.

Q. Do you know how the patent was issued, whether it was a State patent?

A. I don't recollect.

Q. Is this 160 acres within the confines of what is called the Depaoli Ranch?

A. It is.

Q. How many acres of cultivated land are there

(Testimony of Mr. Depaoli.)

in the entry that you made in 1925 under the Act of 1924?

Mr. Craven: Same objection.

The Court: Same ruling.

Mr. Craven: Exception.

The Court: Doesn't the record here show in the case?

Q. I am speaking now of the area of irrigated land.

A. If I remember correctly, I think it is something around 300 acres.

Q. That is the land irrigated in your 160 acres of patented land and Indian land as well?

A. Yes. [45] A. Yes.

Q. What we will refer to here in this case as Indian land.

A. Well, I don't know, because as far as I know it is all surveyed in one.

Q. It is all one tract of land? A. Yes.

Q. Is that land fenced? A. It is.

Q. Is it ditched? A. It is.

Q. Cross ditched? A. Yes.

Q. Any improvements on it? A. Houses.

Q. What houses?

Mr. Craven: We object to the question on the ground it is incompetent, irrelevant and immaterial and has not been made an issue in this case.

The Court: I am inclined to think the objection is good, but if it has some bearing, I will permit it, subject to the objection.

(Testimony of Mr. Depaoli.)

Mr. Kearney: In the light of the recent decision from the Circuit Court of Appeals, the question of the present condition——

The Court: We will consider those things, all those matters, later.

Mr. Craven: Exception.

Q. You say houses?

A. Houses, corrals—— [46]

Q. Just go ahead and state all the improvements.

A. Well, houses, corrals, cellars and fence, cultivated land.

Q. What is growing on the land?

A. Well, alfalfa and other crops that I plant.

Q. How long have you personally lived on the land? A. Twenty years in February.

Q. And did your father have the land prior to that time, to your knowledge?

A. Not this place I am on now. My father-in-law had it.

Q. Was it necessary to level that land before it was placed in cultivation?

A. Well, some of it was leveled and I did a great deal of levelling myself.

Q. In the original state, the adjacent lands, can you tell whether it required levelling to bring it into cultivation? A. It certainly did.

Q. The land that you levelled yourself and cultivated, what was the average cost for breaking the land from the rough condition and putting it in a state of cultivation?

(Testimony of Mr. Depaoli.)

Mr. Craven: Same objection.

The Court: Same ruling.

Mr. Craven: Exception.

Q. In labor, etc.

A. Something like \$100 to \$125.

Q. That includes plowing and seeding and ditching and construction of ditches for it?

A. Yes.

Q. Where is the water derived from, from what source? [47]

A. From what is known as Proctor ditch.

Q. From where does that get its supply of water? A. From the Truckee River.

Q. Have you made any payment to the Land Office at Carson City for this land under the entry that you made in 1925? A. Yes, I did.

Q. To whom did you pay the money?

A. The United States Land Office, Carson City.

Q. Did you obtain a receipt for it?

A. Yes sir.

Q. And up to the time until after this suit had been filed, did you receive any money that had ever been tendered back to you? A. No.

Q. Did you recently, just a few days ago, or few weeks ago, receive a letter tendering this money back to you?

A. Not the money I paid in 1925.

Q. I mean the full payment under your contract? A. Yes.

Q. What did you do with the check that came?

(Testimony of Mr. Depaoli.)

A. Returned it to its original source.

Q. How long had the government kept that money that you paid in complete fulfillment of the terms of your contract?

Mr. Boyle: We object, it calls for conclusion of the witness, legal conclusion.

The Court: The objection goes to the form of the question. You can ask him how long the government retained the money.

Q. How much money did you pay into the Land Office under your [48] contract of purchase, the final payment?

A. \$5116.62, something like that; I don't know.

Q. You have a pretty good memory—that appears to be it. And when did you pay that to the Commissioner or to the Register of the United States Land Office?

A. On August 11, 1936.

Q. And was it accepted at that time?

A. Yes sir.

Mr. Craven: We object, as calling for conclusion.

The Court: Simply state whether they received and kept the money.

Q. Did the Register of the Land Office receive and keep the money? A. They did.

Q. And until April 17, 1939, just a month ago, did you ever receive any advice that they had not accepted that money in Washington?

A. No.

Q. I hand you a copy of a letter and ask you if

(Testimony of Mr. Depaoli.)

you received that. A. You mean the check—

Q. If you received the letter or that document?

A. Yes.

Q. Was there anything with it when you received it?

A. A government check for that amount.

Q. That is \$5116.62? A. Yes.

Q. What did you do with that check?

A. Sent it back.

Q. Who received that letter—did you receive it, the letter con- [49] taining the check, or did some one else receive it?

A. I think some of the children brought it out.

Q. Were you home at that time?

A. No.

Q. How long was it before it was called to your attention? A. It was several days.

Q. I hand you now what purports to be a copy of a letter returning the check. Did you send that letter with the check? A. I did.

Q. That is a copy of it? A. It is.

Q. By whom was that letter signed? That is a carbon copy.

A. It was signed by M. P. Depaoli.

Q. That is yourself? A. Yes.

Mr. Kearney: We offer this letter in evidence.

Q. Since writing that letter, have you had any reply to it? A. No.

Q. You enclosed the same check?

A. I did.

(Testimony of Mr. Depaoli.)

Q. That came with the letter to you of April 17th? A. I did.

Mr. Craven: We object to it because it is entirely immaterial; self-serving declaration.

The Court: The objection will be overruled. It will be admitted subject to the objection. We will consider the legal phases of it later.

Mr. Craven: Exception. [50]

Clerk: Case No. 2744, Defendant's 1.

Q. Did you send that letter by registered mail?

A. I did.

Mr. Kearney: We offer in evidence the return registry card, bearing the signature of somebody, disbursement officer, date of delivery May 15, 1939 at the Federal Reserve in San Francisco.

Mr. Craven: Same objection.

The Court: Same ruling.

Mr. Craven: Exception.

Clerk: Case No. 2744, Defendant's Exhibit 2.

Q. Mr. Depaoli, how far from the Indian Agency on the Pyramid Lake Reservation are your lands situated?

Mr. Craven: Objected to as entirely immaterial.

The Court: I am impressed it is immaterial, but if you think there is any materiality about it, you may state so.

Mr. Kearney: If the Court please, we are trying to show the equities are all in favor of the defendant. This man is familiar with irrigated lands on the Reservation; that there is no need whatsoever

(Testimony of Mr. Depaoli.)

for these lands for the Indians, aside from the legal phase of it.

The Court: Isn't this case purely law, not equity?

Mr. Kearney: I don't know. If it is a case of equity, then I don't think the Court has jurisdiction. You might say it is a question whether or not the United States, in the form they brought this action, could maintain an action, and if the theory of the government is correct, that these lands were transferred to the Indians by the Wheeler-Howard Act, then certainly they can't [51] bring action on rejectment without naming the Indians and making the Indians a party to the suit.

Mr. Craven: That point has been already decided on the motion to dismiss. That was the sole ground.

Mr. Kearney: Not the sole ground.

Mr. Craven: The principal ground, and the Court decided that adversely to the contention I made.

The Court: I don't want to go to great length in any of these matters. I will permit the main question. This question may be answered, subject to the objection.

Mr. Craven: Exception.

(Question read)

A. I wouldn't be exact. I think something like 17 or 18 miles.

Q. How many acres of land, if you know, are irrigated at the Indian Agency by the Indians?

Mr. Craven: Objected to as wholly incompetent, irrelevant and immaterial.

(Testimony of Mr. Depaoli.)

The Court: My impression is the objection is good. If counsel thinks this may have a bearing, I will permit it.

Mr. Kearney: I say frankly, your Honor, I am putting in this line of testimony because of the decision just rendered by the Circuit Court of Appeals in the Walker River case, where they took those matters into consideration, aside from the question of law, and decided the case not on the question of law, but on the question of equity. [52]

Mr. Craven: We submit this is not comparable to the Walker River case. Counsel might make a statement and maybe we might agree witnesses will testify to these matters and save time.

Mr. Kearney: I think some of these things are embodied in the letters and reports from the Secretary of the Interior and the Commissioner of Indian Affairs, and I might offer the letters as to their content in these official reports, subject to your objection as to their competency. Of course, we won't offer opinions and matters of that kind, but the facts as they appear from the records and contained in this correspondence and in these reports.

Mr. Craven: That will be agreeable.

Mr. Kearney: Then I would like to offer in evidence a letter on the letterhead of the United States Department of the Interior, General Land Office, Washington, December 19, 1929. It says, in reply please refer to 1338675 "L" JPMcP. Memorandum

(Testimony of Mr. Depaoli.)

to the Secretary thru the Commissioner of Indian Affairs. Now it is quite a lengthy report and we would like the privilege of just taking one of these reports and offering it as an exhibit, to avoid reading it at this time, and I think probably the contents of these reports made by the Commissioner of Indian Affairs will sufficiently cover the testimony that Mr. Depaoli would be asked to cover.

Now then the next is a Senate report, concerning the Pyramid Lake Indian Reservation and a letter addressed to Hon. Charles Curtis, from the Department of the Interior, dated Washington, October 17, 1921, and it is addressed to Charles Curtis, Chairman of Committee on Indian Affairs, U. S. Senate, stating [53] certain facts and signed E. C. Finney, Assistant Secretary of the Interior. He was Assistant Secretary of the Interior, just signed "Assistant Secretary." We will furnish a copy of that. We do not offer the opinions of the various parties. That is obviously not evidence.

Then I want to offer the report made to the Commissioner of Indian Affairs, Washington, D. C., dated Reno, Nevada, September 29, 1924, which contains a complete tabulation of the areas and the acres in the various ranches that are involved in this proceeding, eliminating, of course, from our evidence the lands that are not involved. There are some others in the report that are not involved here and that appears to be attached to a letter addressed to the Secretary of the Interior, signed by Ira Lantz,

(Testimony of Mr. Depaoli.)

Special Agent of the General Land Office, and James E. Jenkins, Superintendent of the Reno Agency.

Then I would like to offer in evidence a letter dated Washington, October 26, 1934, Department of the Interior, General Land Office, addressed to the Secretary of the Interior and signed "Antoinette Funk, Acting Commissioner."

Then I would like to offer in evidence the report of the Senate Committee on Indian Affairs, Senate Report 839, the 75th Congress.

I think those cover the facts, altho there are some opinions contained in them aside from references to decisions. We will furnish counsel with a complete copy and ask that all those documents be marked as one exhibit, subject to counsel's objection.

The Court: Let me suggest that you have a printed copy containing all the matters referred to that [54] could be marked for identification. The Court would prefer to reserve ruling on the admissibility.

Mr. Kearney: We would be glad to do that. There is a lot of matter not material in the printed report, but that is satisfactory. We will mark the ones we offer.

The Court: You have referred to certain ones and those will be the ones that will be up for consideration later.

(Testimony of Mr. Depaoli.)

Mr. Kearney: That is satisfactory. I will get one of these which contains the referenece to particular pages and the letters we have referred.

Mr. Craven: Let the record show, may it please the Court, that for convenience to counsel, we do not object to the form that the documents now offered are in. In other words we do not insist that they produce properly authenticated copies or the originals of the documents, but we do object to them on the ground and for the reason that those documents, if the originals were offered, are incompetent and immaterial; no foundation has been laid for their admissibility in themselves, and further, the contents of each of those documents are wholly immaterial and incompetent to prove or disprove any of the issues in this case.

Mr. Kearney: Mr. Craven, I thought the question of the foundation was waived, as I understood it.

Mr. Craven: Yes, that is what I am trying to point out, that we do not insist that counsel produce originals or properly [55] authenticated copies of them, but we do object to the documents because no foundation has been laid for the originals or properly authenticated copies and the contents of them are immaterial.

Mr. Kearney: But in your objection as to the foundation you do not include the lack of authenticity of the documents themselves? In other words, we do not want to have to get original copies and

(Testimony of Mr. Depaoli.)

photostat them and have them certified by the proper officer.

Mr. Craven: I say that they may be offered as tho they were the originals.

Mr. Kearney: But ordinarily within the question of foundation we must prove authenticity of the documents.

The Court: I understood that is waived.

Mr. Busey: May it likewise be understood that the documents are offered in conjunction with all applied cases?

The Court: Then it may be marked for identification. The Court will reserve ruling on the objection.

Clerk: Defendant's 3.

Mr. Craven: Let the record show that Mr. Kearney has pamphlet with pink slips indicating the parts.

Mr. Busey: I have inserted the number of some pages in addition where the documents are set forth in the pamphlet.

Mr. Kearney: I think we had better draw a red line around the letters and documents we offer.

The Court: That can be done later. The reporter's notes disclose what has been offered.

Mr. Craven: What is the ruling?

The Court: Ruling is reserved. [56]

Mr. Craven: Exception.

Q. Mr. Depaoli, you are willing to carry out the purchase of the land in the event any question arises concerning payment of the land?

(Testimony of Mr. Depaoli.)

Mr. Craven: Objected to as immaterial and incompetent.

The Court: Objection overruled. Same exception.

A. I have already paid for it.

Mr. Kearney: Will you stipulate that that money reached the United States Treasury and stayed in the Treasury for some two years before they offered to try to return it to him?

Mr. Craven: I don't know if I could do that. I don't know where the money has been. All I know is the Secretary of the Interior rejected the offered money many months ago. Whether or not he got the money or when he got it, I don't know.

Q. (By Mr. Kearney): So far as you are concerned, the money was out of your possession and had been receipted for by the Registry Land Office?

A. Yes.

Q. And it was two years afterwards and after the filing of this suit that you received a tender of the money back, is that correct, an offer of the money back to you? A. Yes.

Q. And you refused to accept it? A. Yes.

Q. And that was the amount of money that would pay up your contract in full, was it?

A. Yes.

Q. Aside from that, will you state how much money you paid to [57] the government from this amount, aside from the last payment of \$5116.62?

A. Paid \$2514.00 some time in '25.

(Testimony of Mr. Depaoli.)

Q. So all told you had paid \$7631.62, is that correct?

A. I haven't totaled it—I imagine it is.

Q. You allege in your complaint \$7631.44, that was the amount specified in the contract?

A. Yes.

Q. With interest?

A. I guess it was.

Q. The \$5116.62 included interest, did it not?

A. Yes.

Mr. Kearney: I think that is all.

Cross Examination

By Mr. Craven:

Q. Mr. Depaoli, from the time you paid the original down payment in 1925 until you submitted this money to the Register of the Land Office in 1936, you made no other payments, did you?

A. No.

Q. Mr. Depaoli, you got notice of the cancellation of that entry, didn't you? A. Yes.

Mr. Kearney: I object; it is not cross-examination.

The Court: This question has been asked and answered. It may stand.

Q. You got notice from Miss Bowler, demanding——

Mr. Kearney: Objected to on the ground it is not cross-examination.

Q. —demanding that you give up the premises?

(Testimony of Mr. Depaoli.)

Mr. Kearney: Objected to.

The Court: That is in evidence, that the letters were sent. I will permit the question. It may be answered if he had notice.

Q. Did you get that notice, Mr. Depaoli?

A. Yes.

Q. You are still in possession of the property, aren't you? A. Yes.

Q. You got other notices before 1936 demanding payment of the interest and principal?

Mr. Kearney: Objected to on the ground it is incompetent, irrelevant and immaterial, not cross-examination.

The Court: I think that has been covered by some testimony on the part of the plaintiff.

Mr. Kearney: The situation with reference to that, if your Honor desires to have your memory refreshed—he made references to certain notice in 1930 which resulted in appeal to the Secretary of the Interior, which were later nullified and which they waived. In other words, all previous notices of payments of requirement of payment were waived by extensions of time, etc., and is not a matter in issue here now.

The Court: You mean extensions were granted?

Mr. Kearney: Yes, that is tacitly admitted in the letters they have introduced, that they have received extensions of time.

Mr. Craven: There is a question raised on behalf of defendant, so we wish to show that since

(Testimony of Mr. Depaoli.)

1925 there have been repeated demands and extensions of time, and as a matter of fact, reappraisements and reduction in the price and offer to prove that [59] the government has cooperated in every way possible.

The Court: Well, I will permit a brief showing along that line.

(Question read)

A. Yes.

Q. You participated in appeal from the General Land Office to the Secretary of the Interior, did you?

A. Yes.

Q. And you had notice of the ruling of the Secretary of the Interior?

A. Yes.

Q. And they gave you *time* in which to pay the principal and the interest?

A. Yes.

Q. But you didn't do it, is that correct, until after the cancellation?

A. No, I couldn't pay it until I had the money.

Q. It never was paid until after cancellation?

Mr. Kearney: We submit that calls for legal conclusion, as to whether or not there was a cancellation.

The Court: Well, it may be notice of cancellation. It is the document that has been introduced. I think it has already been asked when payment was made and the amount thereof and that there were no other payments made.

Mr. Craven: That is all.

(Testimony of Mr. Depaoli.)

Redirect Examination

By Mr. Kearney

Q. In 1930 were any demands made or notice to pay before that time and up to 1936, when you actually made payments—you had al- [60] ways obtained extensions, is that correct?

A. I thought I had.

Q. And there had been a number of extensions granted during the depression, had there not?

A. Yes.

Q. And at one time there had been an addition made to the price of these lands, which had been fixed upon the basis of their improved value rather than upon the basis of their raw value, isn't that correct?

A. I think so.

Q. And you were successful in having the appraised value reduced somewhat?

A. Yes.

Q. And you had made another application for further relief to have the values reduced from the Trowbridge valuation?

A. Yes.

Q. And were you encouraged in making that application by any government official?

Mr. Craven: Objected to, if the Court please, as not material.

The Court: I think that is objectionable. Objection sustained.

Mr. Kearney: I think that is all.

(Testimony of Mr. Depaoli.)

Recross Examination

By Mr. Craven

Q. The lands in 1934 were reduced \$10.00 an acre, weren't they?

A. I don't remember what the reduction was.

Mr. Craven: That's all.

Mr. Kearney: You don't claim there was any reduction of \$10.00 an acre? [61]

Mr. Craven: Yes.

Mr. Kearney: I think it is based on that original price in the Secretary's letter. I think that is all we have on the Depaoli case.

Case 2745

Mr. Busey: Call Mr. Cerasola.

MR. W. J. CERASOLA,

being first duly sworn, testified as follows:

Direct Examination

By Mr. Busey

Q. Will you please state your name?

A. W. J. Cerasola.

Q. Where do you live at the present time, Mr. Cerasola?

A. Wadsworth.

Q. You live on a ranch near Wadsworth?

A. Yes.

Q. What is the name of that ranch?

A. Cerasola Home Ranch.

(Testimony of Mr. W. J. Cerasola.)

Q. Of approximately how many acres does that ranch consist?

A. Do you mean the cultivated land or all of it?

Q. All together. It contains 488 acres in the lands described in the complaint, does it not?

A. Yes.

Q. And there are in addition to that some other lands?

A. About 600 acres.

Q. That is in all?

A. In all, yes.

Q. There are 488 acres of land described in case No. 2745?

A. Yes. [62]

Q. And in addition you have that patented land, have you?

A. Yes.

Q. How many acres of patented land?

A. 120.

Q. Was that patent secured from the State of Nevada?

A. Yes.

Q. In addition to the Cerasola Home Ranch is there a ranch known as the Olinghouse Home Ranch and the Howell Ranch?

A. Yes.

Q. How many acres does that consist of?

A. 480.

Q. That is the land described in the complaint in case No. 2743?

A. Yes.

Q. Is there also a ranch known as the Hamilton Ranch and Hill Ranch?

A. Yes.

Q. Does that consist of approximately 506 acres?

A. Yes.

Q. That is the land described in the complaint in case No. 2742?

A. Yes.

(Testimony of Mr. W. J. Cerasola.)

Q. When did you first live on the Cerasola Home Ranch, Mr. Cerasola? A. 1901.

Q. Since that date have you lived there continuously? A. Yes.

Q. Who was in charge of the ranch from 1901?

Mr. Boyle: Objected to as incompetent, irrelevant and immaterial; not germain to the issues of this case. It doesn't make any [63] difference who had charge of it, your Honor.

The Court: I can't see the materiality of it.

Mr. Busey: There are three different ranches and they have been under charge of one person and we simply wish to show that Mr. Cerasola now runs all three ranches and is familiar with all three and before him his father was.

The Court: You may make that showing.

Q. Your father was in charge of the ranches after 1901, was he? A. Yes.

Q. Is your father living at the present time?

A. No.

Q. When did he die? A. 1930.

Q. Is your mother living at the present time?

A. No.

Q. When did she die? A. 1930.

Q. Since 1930 have you been in charge of all three ranches? A. I have.

Q. Is your brother J. A. Cerasola?

A. Yes.

Q. Does he assist you in the operation of the three ranches? A. Yes.

(Testimony of Mr. W. J. Cerasola.)

Q. You are in charge of the ranch that is owned by him? A. Yes.

Q. That is the Hamilton Ranch and Hill Ranch?

A. Yes.

Q. What sort of crops are raised on these ranches, Mr. Cerasola? [64]

A. Alfalfa, grain, and potatoes.

Q. Have you been raising crops similar to that since you first went on there? A. Yes.

Q. What sort of improvements have you made?

Mr. Craven: Objected to as incompetent, irrelevant and immaterial; not bearing upon the issues of the case.

The Court: I will permit it.

Mr. Craven: Exception.

A. Camp buildings, fences, ditches, cultivated lands.

Q. Have you drilled any wells? A. Yes.

Q. You have built houses there for yourself and family? A. Yes.

Q. You have a windmill? A. No.

Q. Do you have an irrigating system thruout all the ranches? A. Yes.

Q. Are these ranches adjoining each other, Mr. Cerasola? A. They are in a way, yes.

Q. Do you have a common irrigating system for them? A. Yes.

Q. And does that include an irrigating system for the 120 acres of patented land? A. Yes.

(Testimony of Mr. W. J. Cerasola.)

Q. The irrigating system for the patented land is in common with the land here in question?

A. Same irrigates all. [65]

Mr. Craven: May it be understood my objection goes to all these questions?

The Court: It is so understood.

Q. Since the year 1925 have you cleared and levelled any lands in question here? A. Yes.

Q. Approximately how many acres?

A. Around 75 acres.

Q. Can you estimate what the cost of clearing and levelling the land was to you?

A. Well, an average of \$125.

Q. That is \$125 per acre? A. Yes.

Q. Since you have been on the property, have you paid the taxes? A. Yes.

Mr. Craven: Objected to as entirely immaterial.

The Court: It has been asked and answered. I will permit it. We will consider it later.

Mr. Craven: We move it be stricken.

The Court: I will take that under advisement.

Q. After the entry which you and your brother and your father made upon each of these three pieces of land involved in the three cases here, did you pay any portion of the purchase price?

A. Yes.

Q. On the Cerasola Ranch what portion of the purchase price did you pay?

A. Paid a quarter of the appraisal made at that time. I don't know just what the exact figures are.

(Testimony of Mr. W. J. Cerasola.)

Q. The appraisal made at that time was approximately \$9500? A. Yes.

Q. Was that appraised price thereafter reduced?

A. Yes.

Q. When was it reduced? Was it about the year 1934, in November?

A. I believe it was.

Q. Did you make any effort to have that reduction in the appraised value brought about?

A. Yes.

Q. You made that effort during a period of years from 1925 to 1934? A. Yes.

Q. What did you do in that respect?

A. Tried to get some relief on it.

Q. Just what did you do?

Mr. Craven: Same objection.

Q. Did you take it up with the Land Department?

Mr. Craven: We object to it, your Honor.

The Court: Unless it is along the same lines of appeal or anything of that kind.

Q. Yes—did you make an appeal to the Secretary of the Interior? A. Yes.

The Court: I will permit that, subject to the objection.

Q. After the lands were re-appraised, what was the re-appraisal value?

A. I don't recollect just what the exact amount was. It was reduced some.

(Testimony of Mr. W. J. Cerasola.)

Q. It was around \$5,000 for the Cerasola Ranch, was it not? [67] A. Yes.

Q. And there was a similar reduction for each of the other ranches?

The Court: A reduction from \$9,000 to \$5,000?

Mr. Busey: Yes sir. Re-appraisment in 1934 reduced the appraised value from about \$9,000 to \$5,000 in the case of the Cerasola Ranch and in the case of the other two ranches, there was a corresponding reduction—all reduced to around \$5,000.

Q. Did you make any effort to pay the purchase price after the reduction in the appraised value?

A. I did.

Q. What did you do?

A. I tried to get the money from the Federal Land Bank to pay it.

Q. Did you also make an effort to obtain Federal loans from various sources?

A. Yes, I did.

Q. Were you successful in securing any of those loans? A. No.

Q. Why not?

Mr. Craven: Objected to as calling for conclusion of the witness; immaterial and irrelevant.

The Court: If he knows I will permit it, subject to the objection.

(Question read)

A. Because they claimed I didn't have title.

Q. Were you finally successful in securing money to pay the balance of the purchase price?

(Testimony of Mr. W. J. Cerasola.)

A. I did. [68]

Q. When? A. I believe it was in 1936.

Q. Did you make an offer of that balance of the purchase price to any government agent?

A. I did.

Q. Who was it? A. Firth.

Q. Do you know what his capacity with the government was?

A. He was a man sent here from Washington.

Q. Do you know whether or not he is an officer in the Department of the Interior? A. Yes.

Mr. Craven: May my objection go to all this testimony?

The Court: Yes.

Q. Did you offer the money to him?

A. He wanted me to assure him that I could get the money if the government wanted it and I did that.

Q. Where did you do that?

A. In the First National Bank in Reno, the main office, before the president of the bank.

Q. They were willing at that time to advance you the money to pay the balance of the price?

A. Yes.

Q. Did you thereafter advise Mr. Firth?

A. Yes.

Q. Are you willing and able at the present time to pay the balance of the purchase price?

A. Yes. [69]

(Testimony of Mr. W. J. Cerasola.)

Q. Are you familiar with the lands in the Indian Reservation, the Pyramid Lake Indian Reservation?
A. I am.

Q. Are there any portion of those lands, Mr. Cerasola, of the Reservation at the present time which are not being used by the Indians?

Mr. Craven: Objected to as immaterial.

Mr. Busey: If the Court please, in that respect this action is brought essentially for the benefit of the Indians. The Act itself provides that the purchase price goes to the Indians in the event the purchase is consummated; likewise, under the Wheeler-Howard Act, unless the Indians approve the sale and disposition of the property, the sale does not go thru; the entire proceeding is one for the benefit of the Indians and they are the persons actually here involved, and where that is the case there are Federal Court decisions to the effect that the status and interests of the Indians affected is always to be considered in construing laws relating to Indian lands. Now in this case the status of the Indians is decidedly affected, so that the situation down there, as far as the Indians are concerned, at the present time their interests in this matter is a matter which could be and should be properly allowed in the evidence in this case.

The Court: I will permit it, subject to the objection. Objection overruled.

Mr. Craven: Exception.

(Question read)

(Testimony of Mr. W. J. Cerasola.)

Q. What is your answer, Mr. *Depaoli*? [70]

A. I didn't answer.

Q. Are there any uncleared or undeveloped lands in the Indian Reservation at the present time?

A. Yes.

Q. Are they being used as ranch lands or not?

A. Yes, using them as pasture lands.

Q. Are those lands such that they could be cultivated if cleared and developed? A. Yes.

Mr. Craven: Same objection.

The Court: I will permit the answer to that. What was the answer?

A. Can be cultivated.

The Court: It may stand, subject to the objection at present.

Q. And the answer was they can be cultivated?

A. Yes.

Q. Would you estimate approximately how much of such lands there are in the Indian Reservation?

A. You mean of such land?

Q. Yes.

A. This particular piece of land I have reference to I imagine is around 500 to 600 acres and it is a river bottom and can be cleared and put in under cultivation just as easy as the land we have now.

Q. Are there other such pieces of land in the Indian Reservation?

A. There are some, yes; not probably as large as that one.

(Testimony of Mr. W. J. Cerasola.)

Q. Do those lands compare favorably with your land that you [71] have cultivated?

A. They adjoin it.

Q. They are the same type of land?

A. Yes.

Q. When your father died, Mr. Cerasola, how did you and your brother acquire the three ranches involved in the three cases here? Did you acquire that prior to his death? A. Yes.

Q. How? A. By a deed.

Q. He deeded the lands to you? A. Yes.

Q. So that you and your wife are the only heirs who have an interest in the Cerasola Ranch at the present time?

A. No, W. J. Cerasola and J. A. Cerasola.

Q. And your wife have an interest?

A. Yes.

Q. In the Cerasola Ranch? A. Yes.

Q. And in the Olinghouse Home Ranch and the Howell Ranch, do you alone have that?

A. Yes.

Q. You have the sole interest in that ranch?

A. Yes.

Q. The Hamilton Ranch and the Hill Ranch?

A. J. A. Cerasola.

Q. He has the sole interest in that?

A. Yes. [72]

Q. Who is P. J. Capurro, Mrs. W. Zecher and Mrs. A. Checchi? A. My sisters.

(Testimony of Mr. W. J. Cerasola.)

Q. Do they have any interest in any of these lands? A. No.

Mr. Busey: I think that is all.

Cross Examination

By Mr. Craven

Q. Mr. Cerasola, do you remember when you got the notice from the Land Office to pay the purchase price and interest within 30 days, the notice was addressed to Domenico Cerasola and you signed that for your father? A. Yes.

Q. You received that personally and your father was dead? A. Yes.

Q. And you received the notices in the other cases too, did you not?

A. Yes, all mail that came to my father I received it all.

Q. And in the case against you and your wife, case No. 2745, you also received that notice?

A. Yes.

Q. Mr. Cerasola, you received letters from Miss Bowler, demanding possession of the lands, did you, by registered letter?

A. I believe I received one. If there have been more, I don't recollect.

Redirect Examination

By Mr. Busey

Q. Mr. Cerasola, were there various extensions in time made to you with reference to the time within which you were to pay the principal and

(Testimony of Mr. W. J. Cerasola.)

interest on the purchase price of these three pieces of land? [73]

A. You mean was it a limited time?

Q. Were there any extensions of the various times in which you were to make payments?

A. Yes.

Q. There were several such? A. Yes.

Mr. Kearney: May I ask one question?

Q. (Mr. Kearney) Mr. Cerasola, during the depression, from say 1931, from that time for a number of years, what were the relative values of farm lands as compared with the value prior to that time?

Mr. Craven: We object; it is entirely immaterial.

Q. What was the relative value of farm land after the depression started, as compared with its value prior thereto?

Mr. Craven: Immaterial and irrelevant; has no bearing whatsoever upon the issues of this case.

The Court: I have serious doubt of its materiality or relevancy, but I will permit it if the witness knows.

Mr. Craven: Exception.

A. Prior to the depression more than half; a difference in value during the depression than before.

Q. During that period of time did you make any effort to have the government recognize that difference in the value of agricultural lands?

(Testimony of Mr. W. J. Cerasola.)

Mr. Craven: Same objection.

The Court: We went into that. There was an application for reduction he testified to.

Mr. Kearney: I missed that. [74]

Mr. Craven: I move the testimony of M. P. Depaoli and W. J. Cerasola, be stricken on the ground and for the reason it is incompetent, irrelevant, and immaterial to prove or disprove any of the issues in these cases.

The Court: For the present the motion to strike will be denied.

Mr. Craven: Exception.

The Court: Exception may be noted. You may ask that later. We will be in recess for 10 minutes.

(Recess taken at 2:45)

2:55 P. M.

Mr. Busey: If the Court please, the United States Attorney has made a stipulation in each of the three cases, concerning certain evidence, which evidence is set forth in the stipulation. The right of the United States Attorney to object to the materiality of this evidence and to make such other objections concerning the evidence as he wishes is reserved. I would like to offer each of those stipulations in evidence. The first is stipulation in case No. 2742. Does your Honor desire me to read these at this time? They simply go to the effect that for

(Testimony of Mr. W. J. Cerasola.)

a period of more than 75 years the land has been improved and occupied by the defendants in each of the three cases.

Mr. Boyle: By the defendants and their predecessors.

The Court: Well, you have stated what they are. That is sufficient.

Mr. Busey: We ask stipulation in case No. 2742 be marked——

Clerk: Defendants' 4. [75]

Mr. Busey: The one in case No. 2743 defendants' Exhibit——

Clerk: Defendants' 5.

Mr. Busey: And in case No. 2746 defendants' Exhibit 6.

Clerk: Defendants' 6.

Mr. Craven: Your Honor, I think it is expressly understood between counsel for the defendant in those three cases that those stipulations may be admitted subject, however, to the objection that the statements contained in the stipulation are entirely incompetent, irrelevant and immaterial.

Mr. Busey: That may be understood, your Honor. And also I would like to ask counsel whether or not he would stipulate that 120 acres of patented land in the Cerasola Ranch was land originally granted the State of Nevada in 1864, to be used by the State of Nevada for the purpose of raising school funds?

(Testimony of Mr. W. J. Cerasola.)

Mr. Craven: I will, your Honor, except that we save our objection that it is incompetent, irrelevant, and immaterial and under condition that it can be expressly understood that the lands in question were always lands of the United States.

Mr. Busey: Well, I will stipulate you may make any objections to the competency or materiality of that evidence as to the 120 acres of land and that the 120 acres of land is patented land and is in no way involved as such in this case.

The Court: Is this land within Sections 13 and 36?

Mr. Busey: I don't know exactly whether that is true in this instance or not. Some of those lands granted to the State for school revenue purposes were not within Sections 13 and 36.

Mr. Craven: I will stipulate that, if it is understood the lands in question in these 5 suits are not in any way involved [76] with any prior grants for school land purposes to the State.

Mr. Busey: We will stipulate to that.

Mr. Kearney: In that connection may I ask that it be stipulated that there are large areas of land within the outside boundaries of the Reservation that have been patented by the United States to the State of Nevada or to other corporations or individuals, notably the lands near Wadsworth and below Wadsworth and adjacent to the lands in question in the 5 suits.

(Testimony of Mr. W. J. Cerasola.)

Mr. Craven: I am not prepared to stipulate that Wadsworth is not in the Reservation.

Mr. Kearney: Oh yes, that is in the Reservation.

Mr. Craven: And you want to stipulate there are certain townsites——

Mr. Kearney: No, just patented areas.

Mr. Craven: Outside of Wadsworth?

Mr. Kearney: Yes, but within the outside boundaries of the Indian Reservation, that have been patented by the United States to the State of Nevada, and that those lands are adjacent to the lands in question in the 5 suits.

Mr. Craven: For instance the Gardella tract?

Mr. Kearney: Mr. Gardella had patented land aside from the land he purchased under these contracts. He has paid in full for his land—they have accepted his money. Then the Garaventa Land & Livestock Company has State patented land and the Lundell Ranch at Wadsworth, a portion is patented and then the 120 acres Mr. Busey has just called your attention to, within the confines of the Cerasola property, 160 acres patented land within the confines of the M. P. Depaoli property, and other patented lands. [77]

Mr. Craven: Would you mind stating the purpose of that?

Mr. Kearney: The purpose is this, that the lands that are involved in this particular proceed-

(Testimony of Mr. W. J. Cerasola.)

ing are a part of other lands which the government has patented within the Reservation, within the Indian Reservation, has parted with the title, and that the unpatented area which is involved in these applications or contracts is adjacent to the lands that they have actually patented.

Mr. Craven: For what purpose?

Mr. Kearney: The purpose to show that not all the land within the Reservation is government land.

Mr. Craven: That is the only purpose?

Mr. Kearney: Yes.

Mr. Craven: That is your purpose too?

Mr. Busey: With reference to what stipulation?

Mr. Craven: You want me to stipulate, as I understand, that there are certain tracts of patented land within the anterior boundaries of the Pyramid Lake Reservation, in your case particularly 120 acres?

Mr. Busey: Yes.

Mr. Craven: The only purpose is to show that there are certain patented areas of land within certain boundaries?

Mr. Busey: Yes, that is the purpose.

Mr. Craven: It being understood that this is the only purpose, we will stipulate in that respect.

Mr. Kearney: The stipulation you have as to the occupancy of 75 years, the facts in those stipulations apply to the other two suits as well?

Mr. Craven: Yes. [78]

(Testimony of Mr. W. J. Cerasola.)

Mr. Kearney: That is to M. D. Depaoli and the Garaventa Land & Livestock Company?

Mr. Craven: Yes.

Mr. Busey: That is all in the Cerasola case.

Mr. Craven: In regard to the stipulation, we stipulate that those are facts for the purpose mentioned, but reserve objections that they are incompetent, irrelevant, and immaterial.

Mr. Kearney: I understand that.

Case No. 2741

MR. GARAVENTA,

being first duly sworn, testified as follows:

Direct Examination

By Mr. Kearney

Q. What is your name please?

A. Joe Garaventa.

Q. What relation do you bear to the defendant, Garaventa Land & Livestock Company?

A. I am president.

Q. The original corporation consisted of whom?

A. My father and myself and brother.

Q. And your father is now deceased?

A. Yes.

Q. How long since? A. 1931.

Q. You are named as a defendant occupying

(Testimony of Mr. Garaventa.)

236.14 acres of land in Sections 4 and 9 of Township 20 N., Range 24 E., M. B. & M., that is correct, is it not? A. Yes.

Q. Those lands were applied for by you under a contract of pur- [79] chase under the Act of 1924, which is referred to in this case?

A. Yes sir.

Q. How much money did you pay down when you made that application? A. About \$1800.

Q. How much of that 236.14 acres is cultivated, approximately? A. About 65 acres.

Q. After 1930 did you make any effort to have the contract modified so as to have the price of the lands reduced? A. Yes.

Mr. Craven: We move that answer be stricken and object on the ground and for the reason it is incompetent, irrelevant, and immaterial.

The Court: For the present the objection will be overruled. It will be admitted subject to the objection.

Q. Pending that period of time, were extensions of time granted in which to make payments of interest and principal on the contract? A. Yes.

Mr. Craven: May it be understood the same objection goes to all this questioning?

The Court: Yes.

Q. In 1930 and up to the present time state whether or not your lands have been mortgaged?

A. Yes, they have been mortgaged.

Q. Where you able during that period of time

(Testimony of Mr. Garaventa.)

following 1930 to pay up in full upon the contract?

A. No.

Q. I understand you had applied for relief from the requirements [80] of the contract?

A. Yes.

Q. Now after you had learned that the contract would not be modified, did you receive any advice from the holder of the mortgage that the money would be forthcoming to pay the balance on the contract? A. Yes.

Q. And did you make an effort to pay that to the United States? A. Yes.

Q. With what result?

A. That it was cancelled.

Q. And you were not able to raise the money until after that notice of cancellation had been received? A. Yes.

Q. And then only thru the holder of the mortgage upon your property? A. Yes.

Q. Do you have other lands adjacent to and surrounding the particular lands in question?

A. Yes.

Q. Are those patented lands? A. Yes.

Q. On what lands are your improvements, the patented lands or the contract lands that are the subject of this suit?

A. The contract lands.

Q. So that in the event you are dispossessed—what are the improvements to your lands?

A. House and barns. [81]

(Testimony of Mr. Garaventa.)

Q. They are all on unpatented lands?

A. Yes.

Q. Are the patented lands irrigated?

A. Yes.

Q. And are the contract lands involved in this suit irrigated? A. Some of it.

Q. Approximately what did it cost per acre to subdue that, to get it in cultivation?

A. Well, some \$75, some \$100.

Q. Why did it cost such sums?

A. Part of it was sand dunes, had to be levelled and ditched.

Q. Did it take any considerable period of time to subdue that land?

A. Yes, a great deal of time.

Q. Over a long period of years? A. Yes.

Q. Is the land fenced? A. Yes.

Q. What would be the effect upon your farm as a unit if these lands were eliminated from the unit as an irrigated project?

Mr. Craven: Objected to on the same ground and the further ground it calls for conclusion of the witness.

The Court: The objection will be overruled. I will hear it subject to the objection.

Q. Did you get the question? (Question read.)

A. Well, it would interfere.

Q. Would it require the construction of a different system of ditches? [82] A. Yes.

(Testimony of Mr. Garaventa.)

Q. How is the land irrigated, by one ditch at the present time? A. By one ditch.

Q. And to whom does that ditch belong?

A. Well, it belongs to myself, Garaventa Land & Livestock Company, and Lundell estate.

Q. The two ranches are half owners each in that ditch? A. Half owners.

Q. You call that the Herman Ditch?

A. Herman Ditch.

Q. And the water right to all the land is owned individually by the Garaventa Land & Livestock Company? A. Yes.

Q. The Lundell land is patented land entirely, is it not? A. Yes.

Q. And that lies immediately east of your land?

A. Yes.

The Court: Let me inquire here—are those water rights involved in the Truckee River suit?

Mr. Kearney: Yes, your Honor. I propose, if the Court would not take judicial knowledge of that temporary restraining order, to ask the Clerk to testify concerning it, so it will be in evidence. I think that counsel will agree that may be taken into consideration by the Court.

Mr. Craven: We will, of course, subject to the objection, that it is incompetent, irrelevant, and immaterial.

The Court: That may be so understood. Reference may be made to it at any time if it is important. [83]

(Testimony of Mr. Garaventa.)

Q. At this time, Mr. Garaventa, is your company able, willing, and desirous of having the contract completed and payment made, so as to obtain the lands as part of your irrigation unit?

A. Yes.

Q. And has your mortgagee at the present time consented to the payment and holding the money available for you?

A. Yes.

Mr. Kearney: I think that is all.

Mr. Craven: No questions, We move to strike all questions of the witness on the ground and for the reason they are incompetent, irrelevant, and immaterial.

The Court: The motion at this time will be denied. We will hear argument later on it.

Mr. Kearney: At this time I desire to offer in evidence the copy of the temporary restraining order, approved by the Judge of this Court, in the case entitled, *United States vs. Orr Ditch Company, et al*, In Equity A, Docket No. 3, insofar as the decree pertains to the lands and water rights of the five defendants—my two defendants and your three joined in this suit—and I will furnish you a printed copy of that the same as I have this other printed form, if counsel prefer, or refer to the original on file in the Clerk's office here.

Mr. Craven: That is agreeable. We object to it

on the grounds it is incompetent, irrelevant and immaterial.

The Court: If it can be considered at all, we can refer to the records in the Clerk's office.

Mr. Kearney: May it be deemed as read in evidence, the original temporary restraining order and finding approved by the Court, [84] insofar as it relates to these particular defendants? This is United States against Orr Water Ditch Company. It is the temporary restraining order which was approved by the Court.

The Court: When was that restraining order issued?

Mr. Kearney: 1926. It is what they call the temporary decree.

The Court: Oh yes, that is the temporary decree.

Mr. Kearney: It was made in the form of a restraining order upon the Master's report that was filed by Judge Talbot and Judge Farrington, after arguments, adopted it as a restraining order, so as to give a three-year trial for distribution of water under it before further objections could be made.

The Court: It may be considered subject to the objection.

Mr. Kearney: That includes water rights of all these, including these rights for the Indian lands also.

Mr. Craven: Well, that certainly is remote.

The Court: We have a good many matters the Court is not certain what the law is.

Mr. Craven: We object to that being considered for any reason whatsoever, and particularly the last statement made by counsel, the water rights of the Indians.

Mr. Kearney: They found for the Indians.

Mr. Craven: Still objected to.

The Court: That is not based on the treaty of '59 is it?

Mr. Kearney: Yes, strange to say, Judge Talbot held different than the Circuit Court of Appeals held and after 70 years, looking backward, they measured the rights—limited them to actual cultivated area, which is 960, and in this finding gave [85] a waterright for 252 acres of land as of 1859, but under the decision of the Court of Appeals it will be reduced to 958, which is actually cultivated area for 76 years. In other words, the Circuit Court of Appeals has decided the question of introspection retrospectively, looking backward, not looking forward from '59, and they base it upon beneficial use rather than upon intended use, which is a new theory of water law, I must confess.

The Court: Is there any other evidence to be offered?

Mr. Kearney: That is all we have, your Honor.

The Court: Any rebuttal?

Mr. Craven: No, your Honor. We renew our motions to strike. We will state to the Court, however, if your Honor is going to consider any of this testimony that has been offered by the defendants, that we are ready and willing to prove,

in rebuttal that the lands in question are necessary for the use of the Piute Indian grounds. We submit that that affirmative evidence on behalf of the defendants is entirely immaterial, whether or not it is necessary. The fact remains, as a matter of law, that the entries have been cancelled.

The Court: Those matters can be considered after we hear arguments or briefs on the matter. If there is any reason for reopening of the case for further testimony on either side, the Court will consider it. I would like to hear from counsel now how they suggest the final submission of the case.

Mr. Craven: We submit that the law of this case as laid [86] down by your Honor on the motion to dismiss is determinative at this stage of the proceedings. The only issue involved, as I see it, is whether or not the Secretary of the Interior had authority and power to cancel the entries. We submit he did, the entries have been cancelled and the defendants, and each of them, now hold illegally and adversely to the government and proper writs for the restitution of those lands to the government should issue and your Honor, as I said, has already decided that issue.

Mr. Kearney: The Court in ruling on the motion, without giving any views, may decide the merits. It is my understanding in ruling on any particular question of law everything corresponds with the present District Court rules, which have recently gone into effect and were in effect with the Court ruled. These matters are all on the trial of the case.

Mr. Busey: There are several other new questions. We think the question of estoppels and laches were not raised on the hearing on motion to dismiss and also the question concerning the sufficiency for the various notices, so there are these issues, other than those presented on the motion to dismiss.

Mr. Craven: I will state to your Honor there is nothing further we can offer in the way of proofs, except perhaps a statement of the facts.

The Court: I was going to suggest along that line that the defendants assume the burden of opening brief and then the government reply in a reasonable time.

Mr. Craven: That is agreeable.

Mr. Kearney: There are two questions in this case that may be followed. I would like to have the government present the [87] theory they are going to stand on. I can see a serious question if they take one theory and if they take another theory. In other words, if the Court please, if this is a contractual obligation, there is ample authority by the Supreme Court of the United States that the government, as contractor, takes the same position as any other individual contractor to perform a service or executing any form of contract whatsoever and if they are going to put this on the basis of sovereign rights, it raises a different question and I do not believe we should be required to anticipate their theory of the case and that they should be required to set forth in a brief their theory of the case. The government may act in a sovereign capac-

ity and may act in a private capacity. Stress is laid on the Wheeler-Howard Act, to the effect that the Indians now have complete control of this land, that under the Wheeler-Howard Act Congress has surrendered the control of certain Indian lands and Indian Reservation, subject, however, to the tribal council. If that is their theory, we have an objection that may be rather serious on account of the original pleadings. In other words, the government can't have its pie and eat it too. They have either to sue in one capacity or the other and they have the choice of determining which form they will take; consequently, I would like counsel for the government to give their theory of the case upon which they sue, so we can meet that theory. They needn't write a lengthy brief but set forth the theory they stand on and then we can meet that particular theory with our theory. Otherwise we are obliged to cover the whole field and perhaps write an unnecessary long brief.

Mr. Craven: We submit our brief on defendants' Motion to [88] dismiss as our opening brief.

The Court: Then if counsel submits it that way, I will allow 30 days. The Court won't be in session, continuously at least, during the months of July and August; 30 and 30.

Mr. Busey: There is one further stipulation counsel has agreed to and that is that the patent issued to the 120 acres by the State of Nevada in the Cerasola Home Ranch was issued in the year 1866.

Mr. Boyle: That is the patent you have referred to?

Mr. Busey: The date of the patent, yes.

Mr. Boyle: What is it you want about that?

Mr. Busey: To stipulate the date of the patent to which Mr. Cerasola has already testified was the year 1866.

Mr. Craven: We agree, subject to the objection.

The Court: When was the Reservation established?

Mr. Busey: The year 1874. I don't think the Reservation was actually created by executive order or Act of Congress until 1874, when it was established by executive order.

(Court adjourned at 3:30 P. M.) [89]

State of Nevada,
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I took verbatim shorthand notes of the proceedings had and the testimony adduced in cases Nos. 2741, 2742, 2743, 2744, and 2745, in which the United States of America is Plaintiff against various defendants, known as the Pyramid Lake land suits, at Carson City, Nevada, on Monday, the 19th day of June, 1939, and the foregoing pages, numbered 1 to 89 inclusive, comprise a full, true

and correct transcript of said proceedings and testimony, to the best of my knowledge and ability.

Dated at Carson City, Nevada, June 27, 1939.

MARIE D. McINTYRE,

Official Reporter.

[Endorsed]: Filed June 30, 1939. [90]

[Endorsed]: No. 9950. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Garaventa Land and Livestock Co., a corporation, Joe Garaventa, Louise Garaventa, his wife, Frank Garaventa and William Garaventa, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed October 14, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 9950.

UNITED STATES OF AMERICA,

Appellant,

vs.

GARAVENTA LAND AND LIVESTOCK CO.,

Appellee.

STATEMENT OF POINTS ON APPEAL.

Now comes the United States of America, appellant in the above-entitled case, and specifies the following statement of points to be relied upon on appeal:

1. The United States is entitled to recover the land within the Pyramid Lake Indian Reservation occupied by the defendant because title to the land is in the United States and the defendant has acquired no rights under the Act of June 7, 1924, or the regulations issued pursuant thereto.

2. The Secretary of the Interior had authority to cancel the application of the defendant for its failure to complete the payments on the purchase price.

3. The defendant has no right to possession of the land in suit.

4. The court erred in entering judgment dismissing the complaint.

NORMAN M. LITTELL,
Assistant Attorney General.
MILES N. PIKE,
United States Attorney.

Service of the above Statement of Points on Appeal, by copy, is admitted this 14th day of October, 1941.

W. M. KEARNEY,
DOUGLAS A. BUSEY,
Attorneys for Appellee.

[Endorsed]: Filed Oct. 15, 1941. Paul P. O'Brien,
Clerk. [91]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF THE
RECORD TO BE PRINTED.

The United States, appellant in the above-entitled case, designates for printing the entire record as certified by the Clerk of the District Court for the District of Nevada, omitting all exhibits other than the following which shall be included in the printed record:

Exhibit No. A

Exhibit No. B

Exhibit No. G (Only one of the five identical copies making up this exhibit need be printed.)

Exhibit No. H

Exhibit No. P

Exhibit No. T (Omit printing all papers except those concerning Garaventa Land and Livestock Co. distinguished by Serial No. 015163.)

Letter to Garaventa Land and Livestock Co. and return receipt signed by them, both contained in Exhibit No. U and distinguished by Serial No. 015163.

Exhibit No. V

Respectfully submitted,

NORMAN M. LITTELL,

Assistant Attorney General.

MILES N. PIKE,

United States Attorney.

Service of the above Designation of Portions of the Record to be Printed, by copy, is admitted this 14th day of October, 1941.

W. M. KEARNEY,

DOUGLAS A. BUSEY,

Attorneys for Appellee.

[Endorsed]: Filed Oct. 15, 1941. Paul P. O'Brien,
Clerk. [92]